Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 962

MARTIN M. GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 963

JACOB P. SHULMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 980

THEODORE GOLDMAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { APRIL 18, 1941. APRIL 18, 1941. APRIL 23, 1941.

CERTIORARI GRANTED OCTOBER 20, 1941.

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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN and JACOB P. SCHULMAN,

Defendants-Appellants.

Statement Under Rule XIII, Subdivision 4.

This action was commenced by the filing of the indictment on February 1, 1940.

The indictment charged that the above named defendants-appellants combined, conspired, confederated and agreed together, and with each other, and with one Samuel I. Kandell, named as a defendant therein, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5) of the National Bankruptcy Act (Title 11, Section 52, United States Code), in that they knowingly and fraudulently caused to be filed a petition in bankruptcy against one Paul Hymowitz and thereafter knowingly and fraudulently attempted to obtain from one Robert Hoffman, one Samuel S. Kolman and said Paul Hymowitz and divers other unknown persons, a sum of approximately $400.00 and promises thereof in consideration of and for acting and forbearing to act in dismissing and causing to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of said petition in bankruptcy.

On the 7th day of February, 1940, the appellants were arraigned and entered pleas of not guilty, and were each admitted to bail in the sum of $500.00.

Prior to the trial a motion was made on behalf of defendants to suppress certain evidence on the ground it was

4 obtained in violation of their Constitutional rights and in violation of Sections 151 and 605 of Title 47, United States Code (Communications Act of 1934). Hon. Henry W. Goddard, before whom said motion came on to be heard, made an order referring same to the Trial Judge for hearing preliminary to the trial proper. In pursuance of said order, a hearing was held before Hon. Sidney C. Mize, on the 15th and 16th days of July, 1940. After the testimony of witnesses and the proofs of the parties were taken the Court made its ruling denying said motion. The trial itself followed immediately thereupon.

5 The trial was commenced before Hon. Sidney C. Mize and a jury on July 16, 1940, and terminated on July 26, 1940.

At the close of the Government's case the indictment was dismissed as to the defendant Samuel I. Kandell and he was discharged.

On July 26, 1940, the jury returned a verdict of guilty as charged as against the remaining defendants.

On the 26th day of July, 1940, sentence was imposed as follows: Each of the defendants was sentenced to eighteen months' imprisonment in a penitentiary, to be designated by the Attorney General.

On the 26th day of July, 1940, Hon. Sidney C. Mize

6 continued the bail of defendants until July 29, 1940, on condition that they take an appeal by July 29, 1940, and the Court fixed bail pending appeal in the sum of $1,000.00 each. On July 29, 1940, defendants-appellants filed their notices and grounds of appeal and gave bail of $1,000.00 each.

On August 19, 1940, Hon. Gaston L. Porterie made an order extending to and including the 15th day of October, 1940, the time of the appellants to file their assignments of error and to settle and file their Bill of Exceptions.

On October 14, 1940, Hon. Harrie B. Chase made a further order extending to and including the 18th day of October, 1940, the time of the appellants to file their

assignments of error and to settle and file their Bill of 7
Exceptions.

On October 17, 1940 a further order was made by Hon. Harrie B. Chase extending to and including October 25, 1940 the time of the appellants to settle and file their Bill of Exceptions.

The appellants present a consolidated transcript of the record upon their separate appeals herein.

No questions were referred to a commissioner, referee or master with reference to any of the appellants.

Indictment.

8

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

* * * * *

Southern District of New York: SS: The Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for said District, upon their oath present:

That, heretofore, to wit, on or about the 24th day of March, 1937, and continuously thereafter until on or about 9
the 13th day of April, 1938, Martin M. Goldman, Theodore Goldman, Jacob P. Schulman and Samuel Irving Kandell the defendants herein, in the Southern District of New York and within the jurisdiction of this court, unlawfully, knowingly and wilfully combined, conspired, confederated and agreed together, and with each other, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29 (b) (5) of the National Bankruptcy Act (Title 11, Section 52 (b) (5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid know-

10 ing that one Paul Hymowitz had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee afore-
11 said, and Paul Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages, and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed
12 the said petition in bankrupty and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

It was part of the conspiracy aforesaid that Theodore Goldman and Samuel Irving Kandell, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of Samuel Irving Kandell, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Theodore Goldman and Martin M. Goldman, two of the defendants aforesaid,

were partners, as co-attorneys for the assignee aforesaid; 13
and that after this attempt had proven unsuccessful, Jacob P. Schulman, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt, and that the said petition would be drawn in such a way that the defendants could procure its dismissal.

It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of 14.
Paul Hymowitz aforesaid pursuant to which the assignment proceeding would be dismissed and the creditors aforesaid would receive about forty per cent. of their claims; and that the defendants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1,500 while the true price at which the defendants would sell to persons to the Grand 15
Jurors unknown the assets of Paul Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1,900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit, about $400, and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan.

It was further a part of the said conspiracy that in consideration of knowingly and fraudulently obtaining the above-mentioned monies, properties, remunerations, compensations, rewards, advantages and promises thereof from Paul Hymowitz, the alleged bankrupt aforesaid, and Samuel S. Kolman, the assignee aforesaid, and Robert Hoffman,

16 the attorney aforesaid, and divers other persons to the Grand Jurors unknown, the defendants would dismiss and cause to be dismissed the petition in bankruptcy aforesaid, and would fail to oppose the dismissal of the same.

OVERT ACTS.

1. In pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 3, 1937, the defendant, Jacob P. Schulman, signed an involuntary petition in bankruptcy praying that Paul Hymowitz
17 be adjudicated a bankrupt.

2. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court on or about April 5th, 1937, the defendant, Jacob P. Schulman, was present at the United States Courthouse in the City of New York.

3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants, Martin M. Goldman and Jacob P. Schulman, met with Robert Hoffman at the office
18 of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York.

4. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 14th, 1937, the defendant, Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York.

5. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about

April 26, 1937, the defendant Jacob P. Schulman, received from Robert Hoffman a bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with an affidavit of the creditors of the said Paul Hymowitz. 19

6. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant, Jacob P. Schulman, executed a receipt for a bill of sale and an affidavit of the creditors of Paul Hymowitz.

7. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this Court, on or about the 13th day of May, 1937, the defendant, Samuel Irving Kandell, caused to be mailed a letter to Endicott Johnson Corp., a creditor of Paul Hymowitz, the alleged bankrupt, asking it to accept a forty per cent. settlement of its claim. 20

8. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about the 14th day of May, 1937, the defendants Theodore Goldman and Martin M. Goldman, procured and caused to be procured an order of the United States District Court for the Southern District of New York, dismissing the involuntary petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt. 21

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 88, United States Code).

JOHN T. CAHILL,
United States Attorney.

Endorsements on Back of Indictment.

22 Feb. 7, 1940—All Defendants pleads. Not Guilty. Bail $500.00 for each defts. Paroled to 4 P. M. to give bail. Defs ordered photographed and fingerprinted. Feb. 19/40 for motions etc. Clancy, J.

March 25, 1940—Martin M. Goldman Pleads Not Guilty. Bail cont'd. Samuel I. Kandell Pleads Not Guilty. Bail cont'd. Mandelbaum, J.

March 26, 1940—Theodore Goldman Pleads Not Guilty. Bail continued. Mandelbaum, J.

July 15, 1940—Trial begun before Mize, J. Preliminary
23 hearing had on motion for Deft Schulman to suppress evidence.

July 16, 1940—Preliminary hearing continued and concluded. Motion to suppress certain evidence denied. Trial continued. Trial cont'd on July 17-18 and 19.

July 22, 1940—The Gov't rests—atty for Defts Theo Goldman, Martin Goldman and Jacob Schulman move to dismiss etc. Motions denied. Atty for Samuel I. Kandell moves to dismiss the indictment as to his client—Motion granted. The trial cont'd on July 23, 24.

24 July 25, 1940—Defendants rest. And renew their former motions to dismiss—Motions denied. The Gov't rests. Summation by Mr. Fielding, atty for deft Schulman.

July 26, 1940—Summation by Mr. Corbin, atty for Mar. & Theo Goldman. Summation by Asst. U. S. Atty Walsh for Gov't. The Court charges the jury who retire at 3:35 P.M. in the custody of a sworn marshal and return at 6:30 P.M.

Verdict—Defts Martin T Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged. Motions to set aside verdicts denied. Motions for a new trial denied.

All defts, Martin T. Goldman, Theodore Goldman and Jacob P. Schulman sentenced to eighteen months in a penitentiary to be designated by the Atty General. Payment of fines of all defts remitted. 25

Bail fixed at $1,000.00 pending appeal as to all defts. All Defts paroled to July 29, 1940 in custody of their respective attys to give bail.

Mize, J.

Docket Entries.

Feb. 1, 1940—Filed Indictment. 26

Feb. 5, 1940—Filed Notice of Appearance of—Philips, Mahoney & Fielding—atty for—Jacob P. Schulman.

" 6, " —Filed Notice of Appearance—Kadel, Sheil & Weiss atty for Theodore Goldman and Martin M. Goldman.

Feb. 7, 1940—Martin M. Goldman Pleads Not Guilty Bail $500)

" 7, " —Theodore Goldman Pleads Not Guilty Bail $500) Paroled 4 P. M. to give bail. 27

" 7, " —Jacob P. Schulman Pleads Not Guilty Bail $500) Defts ordered fingerprinted and photographed 2/19/40 for motions, etc.

" 7, " —Samuel I. Kandell Pleads Not Guilty Bail $500) Clancy, J.

" 7, " —Filed recognizance for Martin M. Goldman —$500—U. S. F. & G. Co. surety.

Docket Entries.

28 Feb. 7, 1940—Filed recognizance for Theodore Goldman—$500—U. S. F. & G. Co. surety.

" 7, " —Filed recognizance for Jacob P. Schulman—$500—U. S. F. & G. Co. surety.

" 7, " —Filed recognizance for Samuel I. Kandell—$500—U. S. F. & G. Co. surety.

" 19 " —Filed Notice of Appearance for Samuel I. Kandell by Samuel J. Siegel and Joseph Selman, attys.

" 23 " —Filed Notice of appearance—George J. Mintzer atty for Samuel I. Kandell.

29

" 23 " —Filed Notice of Appearance—Silver & Bernstein atty for Martin M. and Theodore Goldman.

" 24 " —Filed order extending time of defendants to file a demurrer to and including the 29th day of February, 1940.

Coxe, J.

Mar. 1, 1940—Filed order extending time of defendants to file a demurrer to and including March 4, 1940.

30

Coxe, J.

" 4, " —Filed Demurrer on behalf of Samuel Irving Kandell.

" 4, " —Filed Demurrer on behalf of Martin M. Goldman and Theodore Goldman.

" 13, " —Memo endorsed on Demurrer S. I. Kandell filed 3/4/40 "Demurrer overruled". Mandelbaum, J.

Docket Entries.

Mar. 13, 1940	Memo endorsed on Demurrer as to M. M. Goldman and T. Goldman filed 3/4/40 "Demurrer overruled". Mandelbaum, J.	31
" 25, 1940	Martin M. Goldman Pleads Not Guilty. Bail cont'd. Mandelbaum, J.	
Mar. 25, 1940	Samuel I. Kandell Pleads Not Guilty. Bail cont. Mandelbaum, J.	
" 26, 1940	Theodore Goldman Pleads Not Guilty Bail cont'd. Mandelbaum, J.	32
Apr. 22, 1940	Filed consent of substitution of Harold H. Corbin as atty in place and stead of Edward S. Silver, for defendants Martin M. Goldman and Theodore Goldman.	
May 17, 1940	Filed notice of motion and affidavits for an order to quash, suppress and withhold from the jury all evidence illegally obtained, etc. Memo endorsed:—"This motion is reserved for this trial upon consent of counsel". 5/16/40. Goddard, J.	33
May 17, 1940	Filed affidavit in opposition to motion to quash and suppress the evidence claimed to have been illegally obtained.	
July 15, 1940	Trial of all defts begun before Hon. Sidney C. Mize. Preliminary hearing had on motion of deft. Schulman to suppress evidence.	
" 16, "	—Hearing concluded—Motion denied.	

Docket Entries.

34 July 17, 1940—Trial cont'd.

" 18, " —Trial cont'd.

" 19, " —Trial cont'd.

" 22, " —The Gov't rests—attys for defts—J. P. Schulman, M. T. Goldman, Theodore Goldman move to dismiss etc.—motion denied. Atty for deft. Samuel I. Kandell moves to dismiss—Decision reserved.

" 23, " —Motion to dismiss as to deft. Sam. I. Kandell granted.

35 " 24, " —Trial cont'd. as to M. T. Goldman, Theo Goldman and J. P. Schulman.

July 25/1940 —Defts. rest and renew their former motions to dismiss—Motions denied. The Govt. rests.

Summation by Mr. Fielding, atty. for deft. Jacob P. Schulman.

July 26/1940 —Summation by Mr. Corbin, atty for defts. M. Goldman and T. Goldman.

Summation by Mr. Walsh, atty. for Govt.

36 The Court chargs the jury who retire at 3:35 P.M. in the custody of a sworn court officer, and return at 6:30 P.M.

" " " —Verdict: All defts. Martin Goldman, Theodore Goldman and Jacob P. Schulman guilty as charged.

Motions by all defts. to set aside verdict denied.

Motions by all defts. for a new trial denied.

All defts. Martin T. Goldman, Theo. Goldman and Jacob P. Schulman sentenced to

	eighteen (18) months in a penitentiary to be designated by the Atty-General and fined $25.00. Payment of fines remitted.	37
" " "	—Bail of all defts. set in the amt. of $1000.00 pending appeal and all defts. released in the custody of their respective attys until 7-29-40 to give bail.	
" " "	—Filed judgments as to J. P. Schulman, Theo. and M. M. Goldman. Mize, J.	
July 29/40	—Filed Notice of Appeal of Theodore Goldman and grounds of appeal.	38
July 29/40	—Filed Notice of Appeal of Martin M. Goldman and grounds of appeal.	
July 29/40	—Filed Notice of Appeal of Jacob P. Schulman and grounds of appeal.	
July 29/40	—Filed Bond pending appeal of Theodore Goldman $1000. U. S. F. & G. Co. surety.	
July 29/40	—Filed Bond pending appeal of Martin M. Goldman $1000. U. S. F. & G. Co. surety.	
July 29/40	—Filed Bond pending appeal of Jacob P. Schulman $1000. U. S. F. & G. Co. surety.	39
Aug. 21, 1940	—Filed order extending time of defts. to file assignments of error and to settle and file bill of exceptions to and including Oct. 15, 1940. Porterie, J.	

Judgment—Martin M. Goldman.

40 At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

41 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

MARTIN M. GOLDMAN

On motion of the United States Attorney, Ordered Sentence.

42 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000. pending appeal.

Paroled to July 25, 1940 in custody of counsel to give bail.

S. C. MIZE.
United States District Judge.

COMMITMENT. 43

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the

at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein 44

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention. 45

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Judgment—Theodore Goldman.

46

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

47 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

THEODORE GOLDMAN

On motion of the United States Attorney, Ordered Sentence.

48 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000 pending appeal.

Paroled to July 29, 1940 in custody of counsel to give bail.

S. C. MIZE.
United States District Judge.

COMMITMENT.

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the
at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention.

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Judgment—Jacob P. Schulman.

52 At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court House, in the Borough of Manhattan, City of New York on July 26, 1940.

Present: THE HONORABLE SIDNEY C. MIZE, *Judge*.

C. 107-2

U. S. Criminal Code, Section 88, Title 18, U. S. C.

53 Unlawfully Conspiring to Act and Forbear to Act in Bankruptcy Proceedings.

THE UNITED STATES OF AMERICA

—against—

JACOB P. SCHULMAN

On motion of the United States Attorney, Ordered Sentence.

54 It is thereupon ordered and adjudged that the above named defendant be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a penitentiary For and during the term and period of Eighteen (18) Months and Fined $25. Payment of fine remitted.

Bail fixed at $1,000. pending appeal.

Paroled to July 29, 1940 in custody of counsel to give bail.

S. C. MIZE,
United States District Judge.

COMMITMENT. 55

IN THE

DISTRICT COURT OF THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK.

The President of the United States of America
To the Marshal of the United States for the Southern District of New York
and to of the
at

WHEREAS the foregoing judgment and sentence was pronounced against the defendant named therein 56

AND, WHEREAS the Attorney General of the United States has designated the above named institution as the place of confinement where the said sentence shall be served.

NOW THIS IS TO COMMAND YOU, THE SAID MARSHAL forthwith to take and safely transport to said institution and there deliver to the officer in charge thereof the aforesaid defendant together with a copy of this writ; and you the officer in charge of said institution to receive, keep and imprison said defendant in accordance with said sentence, or until said defendant shall be otherwise discharged by due course of law. If said prisoner shall have been committed to a jail or other place of detention to await transportation to the place at which said sentence is to be served, said sentence shall pursuant to law begin on the date on which said defendant was received at such jail or other place of detention. 57

Witness, the Honorable Sidney C. Mize Judge of said Court, and the seal thereof affixed at New York City in said District this 26th day of July, 1940.

GEORGE J. H. FOLLMER,
Clerk.

Notice of Motion to Suppress Evidence.

58

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Docket #C 107-2.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

59 Defendants.

PLEASE TAKE NOTICE that on the affidavit of Jacob P. Shulman duly verified the 22nd day of April, 1940, the affidavit of Harry Raynor duly verified the 4th day of April, 1940, the affidavit of Albert E. Frost duly verified the 4th day of April, 1940, the affidavit of George Fetherston duly verified the 10th day of April, 1940, and on all the proceedings heretofore had herein, including the indictment heretofore found, the undersigned will move this Court on the 29th day of April, 1940, at the Criminal Part thereof,
60 held in Room 318 of the United States Court House, Foley Square, Borough of Manhattan, City of New York, at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order to quash, suppress and withhold from the jury all evidence illegally obtained, directly or indirectly, or delivery to the defendant of any documents, records or other proof obtained by illegal means, or in the alternative, to furnish the defendant with a transcript or duplicate record of any evidence obtained in the manner or form as set forth in the moving affidavits, and

or such other and further relief as to the Court may be 61
eemed just and proper.

Dated, New York, April 22nd, 1940.

Yours, etc.,

PHILLIPS, MAHONEY & FIELDING,
Attorneys for Defendant,
Jacob P. Shulman,
Office and P. O. Address,
51 Chambers Street,
New York City. 62

o:

Hon. John T. Cahill,
United States Attorney,
U. S. Court House,
Foley Square, New York City.

63

Affidavit of Jacob P. Shulman in Support of Motion.

64 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Docket #C 107-2.

UNITED STATES OF AMERICA,

Plaintiff.

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

65

State, City and County of New York—ss.:

JACOB P. SHULMAN, being duly sworn, deposes and says:

I am an attorney and counsellor-at-law, having been admitted to the Bar of the State of New York on the 16th day of November, 1925, and ever since that time have been practicing my profession.

On the 2nd day of February, 1940, a Grand Jury sitting in this Court filed an indictment against Martin M. Goldman, Theodore Goldman, Samuel Irving Kandell and myself, alleging a conspiracy to violate Section 29(b) (5) of the National Bankruptcy Act (Title 11, Section 52(b) (5), United States Code).

66

All defendants pleaded not guilty to that indictment and presently are on bail awaiting trial.

My professional conduct has at no time ever been challenged, impugned or criticized, despite an active practice in both State and Federal Courts in this jurisdiction.

I maintain an office for the transaction of business at 270 Broadway, Borough of Manhattan, New York City.

From March 1933 to May, 1939, I was a tenant in

premises known as 277 Broadway, Borough of Manhattan, 67
New York City, occupying rooms 1509-10, consisting of a waiting room and two private office rooms.

Martin M. Goldman and Theodore Goldman are attorneys admitted to the Bar of the State of New York for many years, and presently and always have been in good standing in their profession. Irving Kandell is not an attorney.

The indictment alleges that knowing that Paul Hymowitz had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, as assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, that we unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together that 68
we institute and cause to be instituted a bankruptcy proceeding, and attempt to obtain from Robert Hoffman, the said attorney, Samuel S. Kolman, the said assignee, and Paul Hymowitz, the alleged bankrupt, remunerations, compensations, rewards and advantages in the sum of approximately $400. That as part of the conspiracy we would act in concert to have the said petition in bankruptcy dismissed and cause the same to be dismissed and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy.

The indictment further alleges that as part of the con- 69
spiracy that Theodore Goldman and Samuel Irving Kandell, two of the defendants, claiming to represent the creditors, would seek to obtain from Robert Hoffman, the said attorney and Samuel S. Kolman, the said assignee, the appointment of Samuel Irving Kandell as co-assignee, and of the firm of Goldman, Malter & Goldman, of which Martin M. Goldman and Theodore Goldman were partners, as co-attorneys for the assignee, and that after that attempt had proven unsuccessful, your deponent, Jacob P. Shulman would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt and that the said petition would

70 be drawn in such a way that the defendants could procure its dismissal.

One of the Overt Acts alleged in the indictment and designated as Overt Act No. 3, is as follows:

> "3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants MARTIN M. GOLDMAN and JACOB P. SCHULMAN, met with Robert Hoffman at the office of the defendant, JACOB P. SCHULMAN, at 277 Broad-
71 way, in the City of New York."

That while preparing the case for trial it was deemed advisable to investigate any and every source of information to ascertain what evidence existed, if any, to support the alleged Overt Acts alleged in the indictment and of the facts and circumstances involved in this entire proceeding.

In the course of those investigations three persons were interviewed who have made statements under oath which prove beyond doubt that some of the evidence obtained by the Government involving Overt Act numbered 3 and which undoubtedly will be presented at the trial of this criminal
72 proceeding, was obtained by illegal and unlawful means.

Attached hereto and made a part of this application is an affidavit of Harry Raynor, duly verified the 4th day of April, 1940. Raynor was the superintendent of the office building at 277 Broadway and at the time that deponent maintained his offices in rooms 1509-10.

On or about April [illegible] 1937, as appears from the said affidavit, Raynor was visited about 10 o'clock in the evening by two men asserting that they were attached to the Federal Bureau of Investigation and that they had had a previous talk with one Albert E. Frost, who was at that time a night engineer at 277 Broadway, in which they had requested

Frost to permit them, without the knowledge of deponent, 73
to enter deponent's private offices and install a dictaphone machine equipment in that room and certain other parts of the same apparatus in an adjoining room 1508, which was then unoccupied, but that permission to do so had been refused.

The visit to the Raynor home was made for the purpose of requesting that he, Raynor, as superintendent of the building, issue orders to the night engineer Frost that permission be given for this installation. Raynor did give those instructions and the dictaphone system was installed in deponent's private law offices in the night time after business hours wholly without his knowledge until he was so in- 74
formed of that incident on the 4th day of April, 1940.

Attached hereto is an affidavit of Albert F. Frost verified the 4th day of April, 1940. He was an engineer at 277 Broadway, Borough of Manhattan, City of New York, at that time, and in April 1937 was assigned to night watch for the hours between 4 P. M. and midnight. That affidavit recites that two men visited him about 9 o'clock of an evening in April, and wanted to go up to the 15th floor without identifying themselves. He refused to permit such action. The next evening between 10 P. M. and 1 A. M., the same two men appeared with a third man subsequent 75
to a telephone call received by Frost from Mr. Raynor, the superintendent, who instructed him to honor their request. The affidavit further states that Frost accompanied the three men who then identified themselves as attached to the Federal Bureau of Investigation. Frost at the request of said agents opened deponent's offices, room 1509-16, and these three men entered the room and were there for some time.

There can be no question of what the purpose of the visit of these persons were inasmuch as the affidavit of

76 said Frost states that they carried with them dictaphone machines and wiring equipment.

Deponent respectfully refers to the Frost affidavit for the details as to how the dictaphone was rigged up in deponent's room and how it was carried through the baseboard of the wall to the adjoining room.

These Federal agents had no right or authority to demand from the superintendent of the building the right of access to deponent's private offices and such entry, unknown to deponent, is a violation of his rights.

Attached hereto marked Exhibit A is a copy of instructions by the Attorney-General dated March 15, 1940, to
77 the Federal Bureau of Investigation prohibiting the use of wire-tapping or any other method of entrapment in the gathering of evidence. Any alleged evidence obtained by the Government as a result of the illegal installation of dictagraph devices in deponent's private offices, was so obtained by oppressive and illegal means. That the Government attaches importance to the evidence so obtained, is evident by the fact that it charges specifically as Overt Act numbered 3, a conference in deponent's office on the day following the installation of the dictaphone apparatus.

Deponent respectfully asks that an order be entered herein
78 suppressing any and all evidence by the Government where the same was obtained by improper and illegal methods. That the acts as alleged herein and in the supporting affidavits are in violation of the constitutional rights of the defendant and of the others who are likewise defendants named in the indictment.

In order that the content of the affidavits attached herewith and written out in longhand, may be more readily readable, typewritten copies of them have been affixed to this application. Likewise attached to this affidavit and

marked Exhibit B is a copy of the indictment hereinbefore 79
referred to.

JACOB P. SHULMAN.

Sworn to before me this
22nd day of April, 1940.

MARY EUCHARIA BUSER,
Notary Public, Queens County.
Queens Co. Clk's No. 285 Reg. No. 456.
N. Y. Co. Clk's No. 142 Reg. No. 2B179.
Commission expires March 30, 1942.

EXHIBIT A.

80

OFFICE OF THE ATTORNEY GENERAL

Washington, D. C.

March 15, 1940.

ORDER NO. 3343

As of this date the provision of the manual governing the operations of the Federal Bureau of Investigation, which was adopted in 1931 on order of the Attorney General, and which reads as follows, is superseded,

> WIRE TAPPING: Telephone or telegraph wires shall not be tapped unless prior authorization of the 81
> Director of the Bureau has been secured.

In its place and stead there is hereby reinstated the provision of the manual which prevailed until 1931:

> UNETHICAL TACTICS: Wire tapping, entrapment, or the use of any other improper, illegal, or unethical tactics in procuring information in connection with investigative activity will not be tolerated by the Bureau.

ROBERT H. JACKSON,
Attorney General.

EXHIBIT B.

82

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

* * * * * *

Southern District of New York: SS: the Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for said District, upon their oath present:

That, theretofore, to wit, on or about the 24th day of March, 1937, and continuously thereafter until on or about
83 the 13th day of April, 1938, MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL the defendants herein, in the Southern District of New York and within the jurisdiction of this court, unlawfully, knowingly, and wilfully combined, conspired, confederated and agreed together, and with each other, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, to wit, to violate Section 29(b)(5) of the National Bankruptcy Act, (Title 11, Section 52(b)(5), United States Code), that is to say, at the time and place aforesaid, the defendants as aforesaid knowing that one Paul Hymowitz
84 had executed a general assignment for the benefit of his creditors to Samuel S. Kolman, assignee, and that one Robert Hoffman was attorney for the said Samuel S. Kolman, assignee, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other that they would institute and cause to be instituted a bankruptcy proceeding, to wit, that they would file and cause to be filed a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt; and that they would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul

Exhibit B.

Hymowitz, the alleged bankrupt aforesaid, and divers other persons to the Grand Jurors unknown, divers monies, remunerations, compensations, rewards, and advantages, and promises thereof, to wit, a sum of approximately $400, the exact amount being to the Grand Jurors unknown, not properly due and belonging to the said defendants, and promises thereof and certain other monies, property, remunerations, compensations, rewards, and advantages, and promises thereof not more particularly known to the Grand Jurors aforesaid, in consideration of and for acting and forbearing to act in the said bankruptcy proceeding, to wit, for acting to dismiss and cause to be dismissed the said petition in bankruptcy and forbearing to act to oppose and cause to be opposed the dismissal of the said petition in bankruptcy. 85 86

It was part of the conspiracy aforesaid that THEODORE GOLDMAN and SAMUEL IRVING KANDELL, two of the defendants aforesaid, claiming to represent creditors, would seek to obtain from Robert Hoffman, the attorney aforesaid, and Samuel S. Kolman, the assignee aforesaid, the appointment of SAMUEL IRVING KANDELL, as co-assignee, and of the firm of Goldman, Malter & Goldman, of which THEODORE GOLDMAN and MARTIN M. GOLDMAN, two of the defendants aforesaid, were partners, as co-attorneys for the assignee aforesaid, and that after this attempt had proven unsuccessful, JACOB P. SCHULMAN, one of the defendants, would file a petition in bankruptcy praying that the said Paul Hymowitz be adjudicated a bankrupt, and that the said petition would be drawn in such a way that the defendants could procure its dismissal. 87

It was further a part of the said conspiracy that the defendants would knowingly and fraudulently receive and attempt to obtain from Robert Hoffman, the attorney aforesaid, Samuel S. Kolman, the assignee aforesaid, and Paul Hymowitz, the alleged bankrupt aforesaid, a promise that they would consent to a settlement with the creditors of

Exhibit B.

88 Paul Hymowitz aforesaid pursuant to which the assignment proceedings would be dismissed and the creditors aforesaid would receive about forty per cent. of their claims; and that the defendants would knowingly and fraudulently receive and attempt to obtain from the said Robert Hoffman a promise to join with the defendants in a sale of the assets of Paul Hymowitz, the alleged bankrupt, and to join with the defendants aforesaid in knowingly and fraudulently stating to the creditors that the price to be received for the assets aforesaid was about $1,500, while the true price at which the defendants would sell to persons to the Grand Jurors unknown the assets of Paul
89 Hymowitz, the alleged bankrupt, was to be higher, to wit, about $1,900; and that the defendants and Robert Hoffman would receive and attempt to obtain the difference between the two sums, to wit, about $400, and that Robert Hoffman, the attorney aforesaid, would promise to join in this plan.

It was further a part of the said conspiracy that in consideration of knowingly and fraudulently obtaining the above-mentioned monies, properties, renumerations, advantages and promises thereof from Paul Hymowitz, the alleged bankrupt aforesaid, and Samuel S. Kolman, the assignee aforesaid, and Robert Hoffman, the attorney aforesaid, and divers other persons to the Grand Jurors unknown,
90 the defendants would dismiss and cause to be dismissed the petition in bankruptcy aforesaid, and would fail to oppose the dismissal of the same.

OVERT ACTS.

1. In pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 3, 1937, the defendant, Jacob P. Schulman, signed an involuntary petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt.

Exhibit B.

2. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court on or about April 5th, 1937, the defendant, Jacob P. Schulman, was present at the United States Courthouse in the City of New York. 91

3. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 7, 1937, the defendants, Martin M. Goldman and Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277 Broadway, in the City of New York. 92

4. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this Court, on or about April 14th, 1937, the defendant, Jacob P. Schulman, met with Robert Hoffman at the office of the defendant, Jacob P. Schulman, at 277, Broadway, in the City of New York.

5. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant Jacob P. Schulman, received from Robert Hoffman a bill of sale signed by Paul Hymowitz covering merchandise and fixtures at 346 Bowery, New York, together with an affidavit of the creditors of the said Paul Hymowitz. 93

6. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about April 26, 1937, the defendant, Jacob P. Schulman, executed a receipt for a bill of sale and an affidavit of the creditors of Paul Hymowitz.

7. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New

Exhibit B.

94 York and within the jurisdiction of this court, on or about the 13th day of May, 1937, the defendant, Samuel Irving Kandell, caused to be mailed a letter to Endicott Johnson Corp., a creditor of Paul Hymowitz, the alleged bankrupt, asking it to accept a forty per cent. settlement of its claim.

8. And further in pursuance to said conspiracy and to effect the objects thereof at the Southern District of New York and within the jurisdiction of this court, on or about the 14th day of May, 1937, the defendants Theodore Goldman and Martin M. Goldman procured and caused to be procured an order of the United States District Court for the Southern District of New York, dismissing the involuntary
95 petition in bankruptcy praying that Paul Hymowitz be adjudicated a bankrupt.

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 18, Section 88, United States Code).

JOHN T. CAHILL,
United States Attorney.

96

Affidavit of Harry Raynor in Support of Motion.

97

State of New York,
County of Greene—ss.:

HARRY RAYNOR, being duly sworn, deposes and says:

I was superintendent of the office building at 277 Broadway, Borough of Manhattan, New York City; I was such superintendent for fifteen years continuously prior to some time in May, 1937.

That from about March, 1933 to at least May, 1937 and for some time thereafter, Jacob P. Shulman was a tenant in said office building, occupying rooms 1509-1510 in said building; said offices consisted of a waiting room and two 98
private office rooms.

That adjacent to rooms 1509-1510 was room 1508; room 1508 consisted of an outer waiting room and two small private offices; that during the period aforementioned, and particularly in the month of April, 1937, room 1508, consisting of the offices aforementioned, was vacant and had been so vacant, for several years prior thereto.

That in April, 1937, I lived with my wife in a three room apartment, second floor, in a small house on Elderts Lane, Borough of Brooklyn, New York City. That on or about April 5, 1937, at about 10 P. M., I was visited by two men 99
in my said apartment. These two men said they were from the Federal Bureau of Investigation. Federal men; that they had spoken to Al Frost, the night engineer of said office building, earlier the same evening; that they had asked Mr. Frost to permit them to put in a dictaphone machine in rooms 1508 and 1509-1510; that Mr. Frost refused to give them such permission but referred them to me —the superintendent of the building. I asked them for their badges and they showed them to me; the badges showed that they were Federal investigators and I was satisfied that they were men from the Federal Bureau of In-

100 vestigation. They told me that there was to be a meeting in Mr. Shulman's office the next day or so and it was necessary for them to have a dictaphone machine wired to his office so the conversation to go on at the meeting could be recorded; they asked me for my permission to wire up such dictaphone machine that night, after midnight, and said that the device would be put in the vacant office, room 1508, and connected to room 1509-1510. Since they were government men, I assumed they had a right to do this and I then phoned, in their presence, to Mr. Frost, the night engineer at the building, to permit these men to instal the talking and listening devices. These two men said "Thank you"
101 to me and left.

The next morning, I went to Room 1508 at about 9 to 10 A. M. and examined what was done. I found that a dictaphone machine had been installed in the closet of one of the private offices nearest to Mr. Shulman's private office room; to that machine there were several wires connected which I felt with my own hands which I saw run through the hole in baseboard from which the steam pipes ran through from room 1508 to rooms 1509-1510. I mentioned to Mr. Frost that same evening that I had noticed the dictaphone machine installed in 1508, with all the
102 wiring, and he said that he had let these two men into the building the night before, at around midnight, pursuant to the authority which I had given him over the phone and he too had seen the machine and wiring installed when the installation had been done.

I do not believe that the dictaphone machine and its equipment remained in room 1508 more than a few days thereafter.

Rooms 1508 and 1509-1510 were always locked, particularly after regular office hours and entry could not be had to these offices without a key; in this instance Mr. Frost had the key that would open the locks on the outer doors

to these offices and I believe that Mr. Frost opened these offices with his key for these two government men. 103

I read the foregoing statement, consisting of three pages, including this last page, and all the statements contained by me are absolutely true of my own knowledge.

HARRY RAYNOR.

Sworn to before me this
4th day of April, 1940.

IVA E. CAMMER,
Notary Public. 104

Affidavit of Albert E. Frost in Support of Motion.

State of New York,
County of Rockland—ss.:

ALBERT E. FROST, being duly sworn, deposes and says:

For twenty-eight years before August 26, 1937 I was engineer at the building at 277 Broadway, Borough of Manhattan, New York City.

In April, 1937 I was assigned on the night watch, between 4 P. M. and midnight. One evening, early that month, at about 9 P. M. two men came in to the lobby of the building and asked whether they could go up to the fifteenth floor. One man was about 5′ 7″ or 5′ 8″, dark complexion and heavy built, the other was taller and of light complexion, both being in their thirties, according to my impression. I refused to let them go up, told them that I could not allow strangers upstairs. They did not identify themselves; they left the building. 105

The next evening at about 10-11 P. M. the same two men and another man came to the building; this time either Mr. Raynor came with them or had telephoned to

106 me that it was proper for me to allow them to go upstairs and put in a dictaphone in rooms 1508 and 1509-1510, that they were F.B.I. men. The men themselves told me that they were from the Federal Bureau of Investigation.

Acting upon orders of Mr. Harry Raynor, the superintendent of the building, on the second visit—on the second night, I rode up these three men in the elevator to the fifteenth floor and with the key that I had, I opened the outer doors of rooms 1508 and 1509 and these three men entered these rooms. These three men took up with them a dictaphone machine, its wiring equipment and they started to instal the machine and draw the necessary wires from
107 room 1508 through the hole in the baseboard of the wall between that room and 1509, along the 1¼" steam pipe, to the steam radiator in room 1509, to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and the machine or dictaphone being on the floor of room 1508, with ear attachments.

These three men worked about an hour that night, then went out for a sandwich, and came back shortly and resumed working that night. I left that night a little after midnight and left these men working in rooms 1508 and 1509.

108 On the sheet used for night visitors to the offices on the upper floors, I made a notation that these three men came in that night, with the date and hour of their arrival. I also made a notation of this visit in a black book which I kept in a desk in the engine room, which was left there when I left my job in August 1937.

These three men had no means of entering these two offices, without my key which I used to open them on the authority and orders of Mr. Raynor.

I told the man who relieved me that night, whose name I do not remember, to say nothing about the visit and work of these three men to anybody. The only ones who

knew about the entire affair were Mr. Raynor, myself and my relief man; possibly also Oscar Lindholm with whom I discussed the matter but who is now dead. The next day I briefly discussed the matter with Mr. Raynor by telling him that these three men worked long into the night in rigging up and wiring this dictaphone in these rooms. 109

In that month, April 1937, room 1508 was vacant and rooms 1509-1510 were occupied by Jacob P. Shulman and his employees or associates. I never told Mr. Shulman about the foregoing affair and, of course, never obtained his consent to the opening of his offices for the purpose aforementioned. I acted on Mr. Raynor's orders alone. 110

I read the foregoing statement and it contains all the facts that I know took place on this subject.

ALBERT E. FROST.

Sworn to before me this
4th day of April, 1940.

E. HUBBARD JOLLIFFE,
Notary Public.
Commission expires March 30, 1941.

111

Affidavit of George Fetherston in Support of Motion.

112 State of New York,
Richmond County.

GEORGE FETHERSTON, being duly sworn, deposes and says:

That from December, 1932 to March 26, 1940, I was employed in the office building at 277 Broadway, Borough of Manhattan, New York City; up to about July, 1937, my work was to clean the public halls and the empty offices from the 11th to the 17th floors of the building; Barbara Saradowski did the cleaning of the occupied offices on those floors.

That in early part of April, 1937, at about 11 P. M.
113 I noticed the lights on in Room 1508 and I asked Albert Frost, the night engineer why those lights were lit. He said that he allowed some Government men to go into that room to instal a dictaphone, and that it was all right for them to work there.

That night, Albert Frost left at about 11:55 P. M. and left Tom Siame in charge of the building, as the relief engineer and night man; he worked from midnight until 8 A. M. of the following day.

At about 12:30 A. M., the same evening, Tom Siame asked me to open the door for the two Government men be-
114 cause they had come back from a sandwich or light meal and that his—Siame's—key was not available. I thereupon used my key to open Room 1508 and the two men entered. The two men stayed on for about ¾ of an hour and left. One of these men was short and stocky and the other taller and light complexioned,—both in their early thirties.

After these Government men left that morning, I was curious to see a dictaphone machine and went into Room 1508 to see it; the machine consisted of a black box, about 10" x 12" x 10", with a case which I thought contained three dry cells, and a set of earphones on top of the box; all of these were in the closet in that room and there were

wires attached to the machine which led to the baseboard of the wall between 1508 and 1509, underneath the 1¼" steam pipe and the ¼" return pipe. 115

Room 1508 at that time was a vacant office and 1509 was occupied as the office of Jacob P. Shulman.

The next night, at about 11 P. M. I again noticed the lights on in Room 1508 and I spoke to Albert Frost about it; Mr. Frost said they, the Government men, were there again and said that I should not disturb them. At about 1:40 A. M. Tom Siame told me to finish my coffee quickly, so that he could go to sleep, because the Government men had just left 1508 and there was nobody left in the building.

Tom Siame left the job at the building at about April 11, or 12, 1937 and I became the night relief man and continued to do the porter work upstairs. When I became such night relief man, it was my job to ask Albert Frost who was in the building, whether the Government men were again working in 1508, to which Mr. Frost replied that these men were not there any more. About a week or a week and a half after Tom Siame left his job, as previously stated, Albert Frost told me one night that the Government men had taken the dictaphone out of 1508. From the first night when I saw the dictaphone machine, I never had occasion to go into Room 1508 to see it again. 116

Albert Frost, the night engineer, worked from 4 P. M. to 12 midnight; Tom Siame worked from 12 midnight to 8 A. M. When I worked either as porter or as night relief man and porter, my hours were from 11 P. M. to 8 A. M.; when I was night relief man, my hours were from 12 midnight to 8 A. M. 117

I became night relief man and porter after Tom Siame left, and I continued so for about 1½ weeks thereafter. Then I became the night relief man and I continued in that job until December, 1937 when I was promoted to mainte-

Endorsement on Back of Motion Papers to Suppress Evidence.

118 nance man during the day, but shifting hours every two weeks.

GEORGE FETHERSTON.

Sworn to before me this
10th day of April, 1940.

Jos. J. CORONATA,
Notary Public.
Richmond County.
119 Commission expires March 30, 1940.

Endorsement on Back of Motion Papers to Suppress Evidence.

This motion is reserved for the trial upon consent of counsel.

HENRY W. GODDARD,
D. J.

120 5/16/40.

Affidavit of Harold P. Turner in Opposition to Motion.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

MARTIN M. GOLDMAN, THEODORE GOLDMAN, JACOB P. SCHULMAN and SAMUEL IRVING KANDELL,

Defendants.

tate of Florida,
ounty of Dade,
ity of Miami—ss.:

HAROLD P. TURNER, being duly sworn, deposes and says:

I am a Special Agent of the Federal Bureau of Investigation.

On the night of April 6, 1937, I and Special Agent J. W. Ransom, also of the Federal Bureau of Investigation, installed in Room 1508 of the office building at 277 Broadway, Borough of Manhattan, City of New York, apparatus to make it possible to overhear conversations taking place in the adjacent rooms, to wit, Rooms 1509-1510.

No part of the apparatus installed was situated in Rooms 1509-1510. Use was made of an existing hole where a pipe ran through the baseboard to conceal a microphone. The microphone was placed in this aperture between the two outer surfaces of the wall separating Room 1508 from Rooms 1509-1510. The apparatus installed was solely for listening in on conversations taking place in Rooms 1509-1510. No telephone or telegraph wires could have been

124 tapped with it nor was it ever intended to tap telephone or telegraph wires with it.

(sgd) HAROLD P. TURNER.

Sworn to before me this
Third day of May, 1940.

(sgd) RUTH DUAY,
Notary Public,
State of Florida at Large.
Comm. exp. Dec. 31, 1942.

125

Testimony.

UNITED STATES DISTRICT COURT;

SOUTHERN DISTRICT OF NEW YORK.

C 107-2.

UNITED STATES OF AMERICA

—against—

126 MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

Before: HON. SIDNEY C. MIZE, *District Judge.*

New York, July 15, 1940.
12.15 p. m.

APPEARANCES: 127

JOHN T. CAHILL, Esq., United States Attorney, for the Government; Bruno Schachner, Esq., and John C. Walsh, Esq., Assistant U. S. Attorneys, of Counsel.

PHILLIPS, MAHONEY & FIELDING, Esqrs., Attorneys for Defendant Schulman; Warren C. Fielding, Esq., of Counsel.

HAROLD CORBIN, Esq., and E. J. BENNETT, Esq., Attorneys for Defendants Morton and Theodore Goldman.

GEORGE J. MINTZER, Esq., Attorney for Defendant Kandell.

The Court: What is the motion? 128

Mr. Fielding: If the Court please, perhaps a little explanation might be in order, to give you an idea what this motion is. These defendants—three of them are attorneys and one is a merchant—were indicted for an alleged conspiracy of the bankruptcy laws. That indictment was handed down late February or early March, and on the 4th of April, pursuant to an investigation which the defendants made, we learned that from two witnesses who are presently in court, that the offices of one of these defendants was opened without his permission in the night 129
time by agents of the Federal Government, who installed a dictograph apparatus in the defendant's room as to one end of it, and wires leading from the listening device in the defendant's office, running through the wall where ear phones or some other method of receiving information was set up in the rooms adjacent to the offices of the defendant. As soon as we learned that information we made a motion to suppress all evidence thus obtained on the ground that it had been obtained in an illegal manner.

130 The matter came on to be heard before Judge Goddard. Subsequently, when we were filing briefs and I was filing a reply affidavit, it was suggested by Judge Goddard that the matter be held in abeyance and that the judge holding the trial should be apprised of the situation and then give heed to our request at this time for a preliminary hearing on those facts.

We have the witnesses in court and ready to proceed on that basis before we go into the trial of the action. I understand from the cases that that is a proper procedure.

131 The Court: Yes. I think that is proper. Is there any objection to that procedure, Mr. District Attorney?

Mr. Schachner: No objection to the procedure, sir. Of course the fact that I am not objecting to the procedure is not to be construed as admitting the legal sufficiency of the facts alleged.

The Court: Yes, I understand that. Very well. We will hear the testimony, then, upon the suppression of that part of the evidence that is claimed to have been unlawfully obtained.

132 Mr. Fielding: Mr. Raynor.

HARRY RAYNOR, called and sworn as a witness for the defendant Schulman, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Raynor, what is your occupation? A. Superintendent of the building.

Q. Of what building? A. 277 Broadway.

Q. And were you acting in that capacity in 1937, prior to May 1st? A. I was.

Q. Do you know the defendant Jacob Schulman? A. I do. 133

Q. is he a tenant in that building? A. He was.

Q. And what room did he occupy as his offices? A. He had 1509 and 10.

Q. And where was room 1508 so far as it lay in connection with rooms 1509-10? A. It was adjoining 1509.

Q. Was that room occupied? A. No.

Q. Now do you recall any circumstance, a little unusual, in the early part of April 1937? A. Oh, yes, I do.

Q. In relation to the visit to you made by a Federal investigator; will you state what transpired? A. Well, there was two Federal investigators came to my house. 134

Q. Where was that? A. That was in Elderts Lane.

Q. Where is that, Brooklyn? A. Brooklyn.

Q. Yes. What time did they come there? A. To the best of my recollection, around nine or half past nine in the evening.

Q. When did you know they were Federal officers? A. I asked them—they told me what they were there for.

Q. What did they tell you? A. They told me that they wanted to get into Mr. Schulman's office and that they were Federal agents and they would like to get in there.

Q. Did they exhibit any authority? A. I asked them for their badges, to show me their badges, and they did. 135

Q. And you were satisfied that they were what they represented themselves to be? A. After talking to them for a little while I was satisfied that they were Government agents.

Q. Then what did you do? A. I told them that I would call up the night engineer and instruct him to let these men into Mr. Schulman's office.

Q. Did you do so? A. I did.

Q. And who was the night engineer to whom you gave that authority? A. Albert Frost.

136 Q. Is he in court? A. He is.

Q. Now, some time afterwards, when you returned to the building, did you go into rooms 1509-10? A. I did.

Q. When did you go in those rooms? A. The following morning.

Q. And did you make an inspection of the room? A. I did.

Q. Did you see anything in the room other than the usual office equipment? A. In the ante office there was wires on the floor and some sort of an instrument in the closet that did not belong there.

Q. Did you follow the lead of the wire? A. I did.

137 Q. And how did you follow it? A. I got ahold of it. It was hard to see owing to the color, and I picked it off the floor and I followed it to the corner of the room where a steam pipe goes through the baseboard.

Q. Into Schulman's office? A. Into 1509.

Q. Did you go into room 1509? A. I went into 1509, felt where it came out of the hole and along the pipe and then I didn't follow it no further.

Q. You saw the wire, however, coming through the aperture of the wall and into Schulman's office? A. I saw it go through and I felt it after it was through.

138 Q. Did you have Mr. Schulman's permission to do this? A. What is that?

Q. Did you have the permission of Mr. Schulman to do this? A. Oh, no, I did not.

Q. Did you say anything to him about it? A. I did not.

Q. Did you give instructions to anybody as to whether or not he was to be informed? A. No.

Mr. Fielding: Your witness.

Cross examination by Mr. Schachner: 139

Q. Mr. Raynor, you testified you were the superintendent of the building at 277 Broadway, did you not? A. That is right.

Q. Are you still the superintendent? A. No, sir, I am not. Shortly after I was laid off, discharged.

Q. About how much later? A. The middle of May.

Q. That is about a month and a half later? A. I presume about that. I couldn't give you exact figures.

Q. In your own mind, Mr. Raynor, did you connect your discharge shortly after these incidents transpired with the fact that the Federal officers had been there? A. Well, 140
I said this, that I had no other cause or thought, know what else could happen because my work had always been satisfactory.

Q. And since you had eliminated everything else you came to the conclusion that for some reason or other, because these officers had been there, you were discharged, is that right? A. Well, in my opinion, I felt that way.

Q. And did you develop a grudge, would you say, against these Federal officers? A. Oh, absolutely no; no, because I wasn't sure anything like that did happen.

Q. But had you been sure you would have developed a grudge, is that right? A. I don't think so; of course I 141
ain't able to work much anyhow any more.

Q. Now, Mr. Raynor, you say that you looked around in room 1508, did you not? A. I did.

Q. How frequently did you go into room 1508 to find out what was there? A. Oh, in reference to previous times, you mean?

Q. Yes, before that. A. Well, when an office is vacant, it is very seldom we go in except to clean it up about once every two weeks, clean up the dust, I mean.

Q. Did you go in personally to clean up the dust? A. Oh, no; sent somebody in mostly.

142 Q. So that if you found anything there you cannot really be sure that Federal officers put it there, isn't that right? A. In this case I can.

Q. You can. You are sure. Now tell us what you found there that was in room 1508? A. I found the wires on the floor.

Q. On the floor? A. On the floor. 1508 was divided into two small offices and the wires come out of the left hand office around into the right hand office and through the partition.

Q. That does not really tell us what you found there. Did you find any objects there apart from wires? A. Well, 143 in the closet there was some sort of an instrument, a box, anyhow. I don't know what was in it. I didn't look.

Q. So you found a box in the closet?. A. I saw it in there, yes.

Q. Now will you tell us how big that box was? A. I couldn't say, not very well, because I didn't pay very much attention to it.

Q. Oh, you did not pay much attention to that box? A. No. I saw it there.

Q. For all you know, it might have been an empty box that might have been thrown away by somebody, is that right? A. Well, no, it couldn't be that very well. 144

Q. Did you try to open it to see whether or not it was empty? A. No, I didn't.

Q. You don't know whether or not it was empty? A. I don't know what was into it.

Q. Well, did it have anything on it to indicate that it belonged to the Federal Government? A. On that part I didn't pay any particular attention to.

Q. So you really have no definite knowledge whether or not that box was in any way related to those wires that you saw? A. Well, yes. The wires was connected to it.

Q. Oh, the wires were connected to the box? A. Yes.

Q. How were the wires connected to the box? A. Why, I didn't examine it. I just saw the wires leading up to the box. 145

Q. You mean they were near the box, is that it? A. To the box.

Q. Did they go into the box? A. Why, they didn't go into the box probably, but had a connection there.

Q. Now we would appreciate it— A. This part of it here, how it was connected, so that I won't say for sure about.

Q. Yes. Now we would appreciate it here if you would only tell us those things which you are fairly and reasonably sure of and which you saw yourself? A. That is what I am trying to do. 146

Q. So you did not see the wires yourself going into the box, isn't that right? A. Going into the box?

Q. Yes? A. They went—no. I seen them up as far as the box.

Q. You saw them somewhere near the box, isn't that right? A. Yes.

Q. Tell us again where the box was? A. In the closet on the right hand side—left hand side of the room located on Chambers Street.

The Court: Just a minute, Mr. District Attorney. The clerk informs me that some of the jurors have come into the courtroom. The jurors are excused until two o'clock. If there are any jurors here, it might be heard by some of the jurors. I mean some of the jurors might be called upon to try this case, so I am going to request all jurors, if there be any in the courtroom, kindly withdraw from the courtroom. 147

(Talesmen step out of the courtroom.)

The Court: You may proceed.

148 Q. Now you say in further following the wires, you found that they led to somewhere near a steam pipe, is that right? A. That is right.

Q. Will you tell us just where that steam pipe was? A. That steam pipe was in the baseboard of the wall between 1508 and 1509.

Q. Was there a hole next to the steam pipe? A. To let the pipe through, yes.

Q. Yes. And these wires led through the hole, is that it? A. That is it.

Q. And you followed them on the other side in room 1509? A. I felt them there, yes.

149 Q. You testified to that? A. Yes.

Q. You say you felt the wires? A. Yes.

Q. What made you think that those were the same wires? A. Because there were no other wires going through there.

Q. You saw them coming out of the hole, is that it? A. I saw them going in in 1508 and I felt them where they came out of 1509.

Q. Oh, you felt them where they came out? A. Yes.

Q. You tell me you felt them. Why didn't you see them? A. I didn't feel like getting down on my knees just at that time.

150 Q. Was it simpler to feel them than to see them? A. I just was doing it through curiosity's sake, that is all. If I had known that anything was coming of it I would have been more particular.

Q. Now having felt those wires, you cannot be really sure that what you felt were the wires coming out of the hole? Isn't it possible that you felt something else? A. I am pretty sure it wasn't a quarter of an inch pipe.

Q. That is quite true, that you could be sure of, but can you be sure that it wasn't some other type of wire? A. Yes, I am sure it was that kind of wire. I am sure it was the same according to the feel.

Q. Well, why are you so sure? A. Because the sense of feeling told me that. 151

Q. What was peculiar about the way that wire felt that you could be so sure? A. It was a twisted wire.

Q. Isn't twisted wire used for a great many other purposes? A. Not bare—well, yes, for a great many other purposes, but we don't never use it bare in a building.

Q. And that was bare twisted wire, is that it? A. Yes.

Q. Now, Mr. Raynor, originally you made an affidavit relating to all the events that we are now talking about? A. To the best of my knowledge, yes.

Q. In that affidavit you did not mention anything about your visit to room 1509, or did you? A. I don't know whether I did or not. 152

Q. Now I have your affidavit here, and I am sure that Mr. Fielding will concede that in the original affidavit there is no mention of it?

Mr. Fielding: In his first affidavit there is no such statement.

Q. Will you tell the Court why you had neglected to mention the fact that you were in room 1509 in your first affidavit? A. Well, it is probably because I didn't think of it.

153

Q. Tell me, weren't you questioned rather thoroughly about these incidents? A. No, no. I wasn't—I wasn't pinned down on anything. I just told my story as offhand as it was, to the best of my knowledge, and that is all there was to it.

Q. Now the second affidavit that you made out mentions that incident. Will you tell the Court, please, what happened between the first affidavit and the second affidavit that brought that incident back to your mind? A. Well, I don't know any more than it just happened to come to me, that I did go in that.

154 Q. The fact that element had become important was not pointed out to you by Mr. Schulman's attorneys? A. Not that I can recall.

Q. Can you recall that it was pointed out to you? A. It wasn't.

Q. You are definite on that, that it was not? A. I am pretty positive.

Q. It is just one of those things that you happened fortunately to remember? A. Well, it is just like any other story you would tell. You tell it over two or three times and it will always be a little different but always the same point.

155 Q. Tell me, Mr. Raynor, what were your office hours? A. Well, my office hours were from nine to five, or at any other time my services were required.

Q. When would you come to the office? A. Oh, I usually got in around half past eight.

Q. Around half past eight? A. Sometimes eight o'clock. I didn't have any particular time to get in.

Q. Now, Mr. Raynor, in your affidavits you state that your examination of room 1508 was conducted between the hours of nine and ten? A. Well, that is probably correct.

Q. You mean you swore to something that is only prob-
156 ably correct? Aren't you sure of it? A. Why, yes, I am positive of it.

Q. You are absolutely positive? A. Yes.

Q. That it was between nine and ten? A. Yes.

Q. And will you please explain to the Court how you, between the hours of nine and ten, when I assume Mr. Schulman was in his office, conducted an examination of his office and felt for wires?

Mr. Fielding: I object to the question, to presume something not in the record.

The Court: I will sustain the objection to that part of it.

Q. Was Mr. Schulman there while you examined the wires? A. No. That particular morning I got in early on account of the agents being up. 157

Q. But you swore in your affidavit that you conducted the examination between nine and ten. A. So I did, so I did.

Q. Mr. Raynor, aren't you assuming that you came in earlier solely because you seemed to think you couldn't explain the fact that you were in Schulman's office otherwise? A. If I have made that statement, that wasn't correct because I know that I was in that office and I did examine those wires before—before office hours, and if I made that statement and swore to it, why then I have slipped a little on time, that is all. 158

Q. So, Mr. Raynor, do I take it that you are susceptible to slipping when you make statements under oath? A. No; as a rule I am pretty positive of what I am saying.

Q. But occasionally you slip, is that right? A. Oh, well, in that case, yes; maybe I did.

Mr. Schachner: That is all.

Redirect examination by Mr. Fielding:

Q. Mr. Raynor, you used your own pass key to let these Federal men into the vacant room, didn't you? A. Yes, sir. 159

Q. And it was your pass key that let them in? A. It was my pass key that let them in.

Q. And they went into the room? A. Yes.

Q. That is, the vacant room? A. Yes.

Q. Did you go into the other room, Schulman's office, with these men? A. Not then.

Q. Did you at any time later? A. No, not for any purpose—for them.

Q. Now you were asked to put down as best as you could recollect the course of the wiring which you saw? A. Yes.

160 Q. I show you a photostat of a diagram which you made and applied to the layout of the office building, and ask you if this is what you prepared (handing)? A. That is a correct layout of the floor.

Q. I call your attention— A. Yes, that is about the way the wires were.

Q. That is the best of your recollection? A. Yes, and here is the closet where the box was (indicating) and here is where the wires was. That is a correct diagram.

Q. And that was prepared by you some three years after the happening of this event, is that correct? A. What is
161 that?

Q. This incident occurred in April of 1937? A. Yes.

Q. You prepared that this year, did you not, that diagram on the yellow sheet of paper? A. Well, this is an original.

Q. That is a photostat of a yellow paper that you prepared yourself? A. Yes, yes.

Q. And that is a true and correct copy of what you prepared? A. That is a true, correct statement or copy of whatever I prepared.

Mr. Fielding: I offer it in evidence.

(Marked Petitioner's Exhibit 1.)
162

Mr. Fielding: That is all.

Recross examination by Mr. Schachner:

Q. One more question, Mr. Raynor. Will you tell the Court whether there is any connection between the fact that you lost your job shortly after the Federal officers came in and the fact that your memory is slippery on these matters so casual? A. Well, that was only a thought in my mind. I had nothing to make me feel sure that it was so, and it just happened so. Maybe it was a coincidence. I had been on the job for fourteen years and my services

was perfectly satisfactory. I never had no complaints, 163
neither with the tenants or with the owner.

Mr. Schachner: That is all.

ALBERT E. FROST, called as a witness on behalf of the defendant Schulman, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live, Mr. Frost? A. Congers, New York, Rockland County.

Q. What was your occupation in April of 1937? A. 164
Engineer, stationary engineer.

Q. Where? A. 277 Broadway, Broadway-Chambers Building.

Q. Speak up so that the Court can hear you? A. 277 Broadway, Broadway-Chambers Building.

Q. And was that the building in which the defendant Schulman had an office at that time? A. Yes, sir.

Q. And the room number was? A. 1509-10.

Q. And adjoining his office was a vacant room, 1508? A. 1508.

Q. Do you recall any unusual circumstances that occurred on the 5th or 6th of April 1937, when you were on 165
duty in the building? A. Well, these Federal men—

Q. Do you remember something unusual? A. I do.

Q. Would you state what it was? A. Well, these Federal men came into the building—

Q. Now just a minute. How did you know they were Federal men? A. Well, Mr. Raynor, the superintendent, brought them down to the engine room, between five and five-thirty that second evening, and the previous evening I refused to allow them to go up into the office when they wanted the key.

Q. Were they the same men, to your recollection? A.

166 Yes, sir, and I told them that Mr. Raynor, the superintendent, had the authority to give the keys, that I could not do so, so they got in touch with Mr. Raynor. I got the address for them and they went out and saw him. The following night, I believe it was the 6th of April, Mr. Raynor brought them down to the engine room again, between five and five-thirty and introduced them to me and gave me the authority to allow them to go into Mr. Schulman's office, 1509, and whatever they had to attend to, and they came in later on in the evening and brought their equipment with them and the wires, and I took them up on the freight elevator to the 15th floor. I opened the
167 empty office, 1508, put on the lights, they brought their equipment and wires in there, and then I opened the adjoining office, 1509.

Q. Which was Mr. Schulman's offices? A. Mr. Schulman's offices, J. P. Schulman, put the lights on and they all came in, the three of them.

Q. Did you go in with them? A. I did, and they looked around and I took them into the private office on the Chambers Street side, and they asked me where would be the best place to bore a hole in the wall, they wanted to run some wires through, so I pointed to an aperture
168 in the baseboard near the corner, an inch and a quarter steampipe line, and a quarter inch returning line running through, connecting up the radiator on the other window on Chambers Street side, and they thought it was O. K.; they would run the wires through there, which they did, and the wires were placed on the floor, under the carpet, under the baseboard and over and behind the radiator. I have been mentioning the fact that it was an ideal location for it.

Q. Did they tell you what it was? A. Well, they didn't tell me, only that they wanted to make this installation, so I told them that between ten-fifteen and eleven o'clock

the cleaners came in and they would have to work fast so they wouldn't be detected, so I got a call, I had to take the car down and bring up some of the cleaners to the fifth floor, and I came up again and I asked them how they were making out and they said all right, they were through, and then I don't think we spent more than twenty or twenty-five minutes in the office, to my recollection, and I put the lights out, shut the door, and they went into the adjoining vacant office, and then I left them, went about my business. I never seen the equipment in the empty office or never seen the men that evening after that. 169

Q. Did you see the apparatus that was installed in Schulman's office? A. It was a sort of listening device, small listening device, I should judge about two and a half or three-quarter inches, something like that. 170

Q. And to that were connected wires? A. The mechanic had a coil of wires on his arm; they uncoiled this through the aperture in the baseboard where the steam line runs through from the adjoining vacant office.

Q. Now what part of Mr. Schulman's office was that part of that device fixed, as a chair or desk or radiator or what? A. To my knowledge and from what I have seen, it was behind the radiator on the floor; the radiator was on the Chambers Street side of the building.

Q. Now these men could not have gotten into that office, Mr. Schulman's office, without your letting them in? A. Absolutely not. 171

Q. Did Mr. Schulman give you permission to let them in? A. He did not.

Q. Did you ever tell Mr. Schulman about the time of the happening of the incident, that such a happening had transpired? A. I did not.

Q. Was there any warning given by anybody not to mention it to Mr. Schulman? A. Only Mr. Raynor wanted me not to say anything to anybody but to pass the information

172 along to my relief who came in at midnight, that these Federal men were in that office and to keep out and not to go in there at all, and the cleaner was given the same instructions.

Mr. Fielding: Your witness.

Cross examination by Mr. Schachner:

Q. Mr. Frost, you say Mr. Raynor came down and introduced these men to you, is that right? A. Yes, sir, absolutely.

Q. Did you read Mr. Raynor's affidavit that he filed for
173 the purposes of this motion? A. I did not.

Q. Mr. Raynor says in that affidavit that he telephoned you from his home and asked you to extend permission? A. He said that was O. K., to let them go into the office.

Q. Will you tell us whether he telephoned or whether he came down personally? A. Well, I am not positive about that, whether he telephoned, but I know he gave me the permission that night, between five and five-thirty, but it was the previous night when I sent them out there to his home.

Q. But Mr. Raynor said he telephoned about nine o'clock at night? A. Well, the only place where he could get a
174 call at that hour of the night would be the cafe which may have been open at the time.

Q. That isn't really strictly in answer to my question. I just want you to tell us whether he came down in person or whether he telephoned. In other words, I want you to tell us whether he is wrong or you are wrong? A. Well, they came over from his home that night and had the permission from him to allow them to go up to this office.

Q. Yes, that we agree upon, but I want you to tell me whether he is right when he said he telephoned you or you were right when you say he came down in person?

A. Well, if I remember correctly, I got the call down in the 175
cafe. They were open a little late that evening.

Q. So Mr. Raynor is right. He telephoned you? A. Yes.

Q. Is that right? A. That is how I got the call.

Q. And when you testified a little while ago that he came down in person, you were in error? A. Well, that was the early part of the evening.

Q. You mean first he came down— A. Yes, sir.

Q. And introduced them to you? A. Exactly.

Q. And then he telephoned you again and said "Well, do what I told you in the afternoon—" A. I might add—

Q. Let me finish— "do what I told you to do in the afternoon?" Is that right? A. Yes. 176

Q. He didn't have anything else to say in that telephone conversation? A. No, sir; that it was perfectly O. K. to let them go ahead. That was the night before, on the 5th of April.

Q. Was it his regular habit to give you instructions twice, once by coming down in person and another time by telephone? A. Not exactly.

Q. Now this was an exception to his usual practice? A. That is right.

Q. Were you surprised to hear him telephoning you? A. Well, they were—I did want to get some definite information so that I would know what to do when they came 177
back.

Q. If you will just answer my question. Were you surprised to hear him telephone you? A. Not at all.

Q. Did you tell him "Why, you told me to do that this afternoon. Why do you bother telephoning me again?" A. I did not mention that fact.

Q. Mr. Frost, in your affidavit in connection with this case you mentioned something about records which you made of the occasion, did you not? A. I did.

Q. Now will you repeat for us just what records you

178 made? A. Well, there was a record made on a sheet of paper, like a pad attached to a clip, that was hanging on the grille work of the elevator. We put down the time when anyone came in and when they left the building, a sort of a visitors' list.

Q. Did you see that record again recently? A. No, I did not.

Q. All right. Did you make any other record? A. I did. We had a small book in the desk drawer in the engine room where we kept records of incidents of this kind for future reference in case anything should come up why we could refer to it.

179 Q. What else was in that book apart from incidents of this kind? A. Well, there was various information there.

Q. Was it a big book? A. No, a sort of a square book, about ten inches square.

Q. And you don't remember what other information was in there? A. Well, there was quite a lot of it in there. I do not recall now.

Q. You don't remember anything else that was pat in there? A. I suppose I could if I refresh my memory, but we had that book—

Q. You made regular entries every day in that book did you not? A. It was a book, I recall now, that we kept
180 the name and address of the other members connected with the engine room staff, and other information, and why they left, and so forth.

Q. Is it a book something like this (indicating)? A. Well, not quite as large; only square.

Q. A book like this perhaps (indicating)? A. No, it has a black cover.

Q. Well, this is black. A. I mean it was all black.

Q. What? A. All black. It didn't have that red around the edges.

Q. It didn't have that? A. And it was square.

Q. How about this book (indicating)? A. No, sir, that 181
is not it.

Q. Do you recognize this book? A. I do. I made many an entry in it. That is our log, engine room log book.

Mr. Schachner: I offer it in evidence.

Mr. Fielding: Mark it for identification.

(Marked Government's Exhibit A for identification.)

Mr. Fielding: May I see that, please.

(Same handed to counsel.)

Mr. Schachner: With your Honor's permission 182
I would like to ask a few other questions while counsel is examining this book.

The Court: Very well.

Q. You say today distinctly that you never saw any equipment in room 1508, is that true? A. I saw it when they brought it off the elevator and took it through the hall and through the empty office and placed it on the floor, but I never went in there after that.

Q. Now you say you saw something placed on the floor as they put equipment in, but you never actually saw anything connected in room 1508, is that right? A. No, not 183
in 1508, because I didn't have occasion to go in there.

Q. You are absolutely certain of that? A. Only that the stuff was brought in there, that is all.

Q. No, no. Now just a minute, if you just answer my question. You are absolutely certain that you did not see anything connected in room 1508? A. No, sir.

Q. Now will you tell to the Court then how it comes that in one of your affidavits you swore that you saw a dictaphone with head pieces connected— A. No. I did not.

Q. In room 1508. A. No, sir, I did not.

Q. So that when you swore to that in your affidavit

184 you were not swearing to the truth, is that right? A. What I swore to was—

Mr. Corbin: Quote the language of the affidavit. You do not have it before you.

Q. (Reading) "and the machine or dictaphone being on the floor of room 1508 with ear attachments." I will read you the whole paragraph, if you like:

"These three men took up with them a dictaphone machine, its wiring equipment, and they started to install the machine and draw the necessary wires from room 1508." A. That is correct.

185 Q. (Continuing) "through the hole in the baseboard of the wall between that room and 1509 along the 1¼" steam pipe to the steam radiator in room 1509 to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and the machine or dictaphone being on the floor 1508 with ear attachments." A. I seen it on the floor. That is all I seen, but I didn't enter the office.

Q. Then your explanation is you saw it as the agents brought it in? A. And laid it on the floor and brought the wires in there. It was about three boxes, if I remember correctly.

186 Q. Well, where were you standing when you saw that? A. In the hall.

Q. In the hall? A. While they were bringing it in there.

Q. Did they leave the door open? A. Exactly, yes, sir.

Q. For everyone to see? A. Well, there was nobody around at the time on that floor.

Q. Now, how long did you stand in the hall? A. Well, just long enough to let them get it in there and they came out and they opened up the door in 1509.

Q. Let me see. Did they carry that equipment in a bag? A. No, they carried it with light handles attached to it.

Q. And where were the ear pieces? A. I didn't see that 187
part.

Q. You didn't see that part? A. No.

Q. You never saw any ear pieces? A. Only the device that was placed in room 1509, that is all.

Q. Mr. Frost, if you will kindly just tell me whether you saw any ear phones, that will be enough? A. No, sir, I did not.

Q. You never in your life saw an ear phone around there, is that right? A. Only a listening device.

Q. Now if you just say that you didn't see an ear phone? A. No.

Q. That is right, you never saw one? A. I judged it 188
was in the box, that is all.

Q. Just a minute. You never saw one, isn't that right? A. That is right.

Q. Now, why did you swear in the affidavit that there was one around there? A. Well, I judge it was in the box, in the equipment there, part of the equipment. I didn't see it opened up.

Q. Just one minute. How do you tell from the outside of a box that it has ear phones inside? A. I can't answer that question.

Q. Actually you can't tell, isn't that right? A. That is 189
right.

Q. Now, probably because you heard about all these matters your imagination supplied some details— A. No, no.

Q. Which was not actually so? A. No.

Q. Isn't that right? A. No, sir.

Q. For instance, these earphones which you mention here, those are purely imaginary, are they not? A. Well, I didn't see the boxes opened.

Q. So you don't know anything about earphones? A. Well, only I understood it was a dictaphone that was to

190 be installed, according to what Mr. Raynor told me. That is why they were there. That was their purpose, to install this dictaphone, and naturally there should be a listening device and earphones attached.

The Court: Well, gentlemen, at this point we will take a recess until two o'clock.

Mr. Schachner: Yes, at two o'clock.

(Recess until 2:00 p. m.)

AFTERNOON SESSION.

191 ALBERT E. FROST, resumed the stand.

Cross examination continued by Mr. Schachner:

Q. You testified, Mr. Frost, did you not, that you made a record of this visit in some book? A. Yes, sir.

Q. And that book—was that a book kept regularly for the purpose of the building? A. Private information.

Q. Now will you tell us what kind of private information you required in the boiler room and noted in that book? A. Well, there has been matters that took place in the building.

Q. Such as what? A. Well, some untold circumstance, 192 where a watchman let somebody into an office or there was any disturbance or anything, and we was on duty acting in that capacity. We acted as watchmen after he was let out. We kept a record of those things.

Q. Why did you put those things in a book labeled "Private Information"? A. Well, just for future reference in case anything turned up, we could give the information to the superintendent of the building if he called for it.

Q. I show you Government's Exhibit A for identification. Will you tell us whether you ever saw that before? A. I certainly have. I have made the entries in it.

Q. And does this book contain all sorts of miscellaneous 193
information? A. No, sir, not that one.

Q. That does not? A. No, sir.

Q. It is not this book? A. It is not the book. That is only an engine room log book, engine room records of operation.

Q. And you cannot tell us why those entries were not made in this book? A. We didn't put them in that book just for that reason. We kept it in a separate book. That is my own idea originally because I kept the records.

Q. Do you know where that book is now? A. I beg your pardon?

Q. Do you know where that book is now? A. I do not. 194

Q. What were your hours, Mr. Frost? A. Well, eight hours a day. We worked three watches, changed around, swing from one watch to another: 8 to 4, 4 to 12, and 12 to 8 in the morning, but during this incident, if that is the watch you are referring to, I worked on the afternoon watch and the midnight watch, alternating each week.

Q. You alternated each week? A. Yes, during that latter period.

Q. So you were there from—— A. Four to twelve.

Q. From four to twelve? A. From four to twelve one week and from 12 to 8 the following week, and then we swung back again, I and the other relief man, the other 195
engineer.

Q. Can you tell us possibly with the aid of Government's Exhibit A for identification, what watch you worked during that week? A. I can. I was on the four to twelve.

Q. You were on the four to twelve watch? A. Yes, sir.

Q. Now you testified before, did you not, that you did not see any equipment except possibly something that the agents might have left lying around loose in the room in 1508; isn't that right? A. Well, the three boxes as I described had the equipment in it and the wire.

196 Q. Oh, there were the three boxes? A. That is what I saw them bring in.

Q. You saw them bring in three boxes. That is all you know about 1508? A. I did not know what the contents were.

Q. All right, that is quite true. Now tell us what you saw in Schulman's office? A. Well, I seen this listening device.

Q. What is a listening device? A. Well, it is an object about two and a half, two and three-quarters in size (indicating), something like an ear phone I called it at that time. I thought it was an ear phone, but it is just a listen-
197 ing device and the wires were attached to that. That is what was placed on the floor.

Q. Where? A. In 1509.

Q. That is, in Schulman's office? A. Yes, sir.

Q. Room 1509? A. Yes, sir.

Q. You saw an ear phone? A. I don't call it an ear phone——a listening device.

Q. Well, something that looked like an ear phone? A. Yes, this one single piece of mechanism.

Q. A single piece of mechanism that looked like the thing in a telephone that you put to the ear? A. Well, it looked that way to me.

198 Q. Oh, it did? A. Yes. I had never seen a dictaphone before.

Q. From the fact that it looked that way to you you assume it looks that way to everybody else? A. Well, I understood it was a listening device for a dictaphone outfit.

Q. Now, who told you that? A. Well, Mr. Raynor, the superintendent, told me that these men were to go in there with a dictaphone outfit to collect evidence. That is all I know.

Q. I don't want you to tell us what somebody else told you. I would like you to tell us just what you saw and all

you saw was the device that looked like an earphone? A. And the wire. 199

Q. And wire? A. And the wire which ran through this aperture in the baseboard.

Q. Now let us see. Where did the wire start? A. From the vacant office, 1508.

Q. That you don't know, because you have testified that you did not see anything in 1508 but you could have seen it possibly coming out outside in 1509? A. I did not go in to examine that part in 1508.

Q. No, but tell us what you saw in 1509? A. Well, I seen the wires which were laying along the floor attached to this listening device behind the radiator, and the other 200 end of the wire was pushed through this aperture in the baseboard of the wall.

Q. How many wires were there? A. There were two that I could see.

Q. Two? A. Twisted wire.

Q. Yes. What kind of twisted wire? A. Well, it looked like small telephone wire, or electric wire, like the wiring for a chandelier. That is what it looked like to me, small wire.

Q. You mean wire that would generally be used, let us say, for the telephone? A. Yes, similar to that.

Q. Or lighting purposes? A. Yes, sir. 201

Q. And how thick was that wire? A. Well, I can't judge that very well. It wasn't very heavy, not like electric wire.

Q. It was not like electric wire? A. No, sir.

Q. Would you say it was as thick as this pencil (indicating)? A. Not quite as thick; no, sir; as far as I could see.

Q. Tell me, what was its color? A. Well, it was dark in color, dark gray, something like that, grayish brown as near as I could see to it, what it was.

202 Q. That is, the color of the insulation? A. That was the wire.

Q. Oh, that was the wire. Wasn't the wire insulated? A. It looked that way to me.

Q. It looked insulated? A. I did not examine it thoroughly. I just seen what he had on his arm, the man that made the installation. He had a coil of it.

Q. Now tell us what you saw there on the floor. You say you saw what? A. That was the same wire.

Q. Well, now, how could you tell that it was the same wire? A. Well, I seen him pushing the wire through the wall. He used it from the same coil.

203 Q. Now you say you saw it connected to that listening device, did you not? A. Yes, sir.

Q. And did you follow that connection from the listening device to the aperture in the wall? A. That is right.

Q. That is right. Well, how did you follow it? A. Well, I just followed where it went through this aperture and that is as far as I looked.

Q. Did you take your hand and follow along? A. I did not examine it, I did not examine it.

Q. Then how did you know that these wires were connected? A. I didn't say they were connected.

Q. Oh, you didn't say that? A. Only on the end where
204 the listening device was attached, but I didn't see where it was connected on the other end because they led into the empty office, 1508.

Q. And you cannot describe the wire to us more particularly? A. Not accurately. There wasn't much time spent in the office during the installation because it didn't take very long to push it through that aperture.

Q. How far was it from the radiator to that aperture? A. Well, offhand I should judge about four or five feet, something like that. Offhand I don't know. I have no accurate measurements.

Q. And where did you say the listening device was attached to? A. It was laying on the carpet behind the radiator. 205

Q. Oh, it was just laying there? A. Yes, up against the baseboard. That is where I seen it.

Q. You are sure that the listening device was lying on the carpet there? A. That is where I seen it.

Q. Behind the radiator? A. Yes, sir, that is where I seen it.

Q. That is where you saw it? A. Yes, sir.

Q. Now will you tell us why you swore as recently as April 4th that it was attached to the radiator? A. I didn't make any statement that it was attached to the radiator. 206 It was lying behind the radiator on the floor.

Q. Will you read this here (indicating)? A. (Witness reads.)

Q. Yes. A. Well, that's the statement I made that this listening device was on the floor behind the radiator but I never saw anything else like dictaphones or anything else.

Q. Well, here it says "attached to the radiator." A. Not to the radiator. Underneath the radiator on the floor up against the baseboard.

Q. So this part of the affidavit where you say it was attached to the radiator— A. I never made that statement it was attached to the radiator. 207

Q. Isn't this your affidavit? A. I said it was lying underneath of the radiator.

Q. Tell me whether or not this is your affidavit. Is it your affidavit? A. Well, I made the statement that it was lying under the radiator on the floor.

Q. Will you answer my question, please? Is this your affidavit or is it not? A. I didn't say it was attached to the radiator.

Mr. Schachner: I did not hear that.

(Answer read.)

208 Mr. Corbin: May we have that paper marked? It isn't in evidence, or any identification of it here.

Mr. Schachner: It is part of the record since it was filed.

The Court: It is not necessary to have it marked. The rule is this: he made a statement different from what he is making now, on another occasion. Then that may be shown in contradiction of his present testimony, so he has laid the predicate now, I take it, in asking him if this is his affidavit, if he made it or signed that affidavit. If he admits it, that is the end of it. If he does not, then the Government will
209 be permitted to contradict it if it has witnesses by which it can contradict it.

Mr. Corbin: I do not take issue with any of that law, sir. My only point was that a paper is being shown to the witness which is not marked, which is not the original affidavit at all, and it would seem to me that it might be orderly to mark it so that we would know for the record.

The Court: You say that is not the original affidavit?

Mr. Corbin: That is what I understand. I make the point anyway, if your Honor feels that it is or if
210 the District Attorney will say that it is, I will take his statement for it. Is that the original affidavit?

Mr. Schachner: The original affidavit, sir, is in the possession of the court.

Mr. Corbin: Then your answer is no. I ask that the paper which the witness has been shown be marked for identification.

The Court: Very well, let it be marked for identification. However, gentlemen, the rule is this: if you want to impeach a witness, you can ask him whether he made a different statement on a former occasion.

Mr. Corbin: I never heard anybody question that in this room, Judge. 211

The Court: Then that ends it. If he denies it—

Mr. Corbin: There is no question about that at all, your Honor.

The Court: Very well. I will let the document about which he is questioned be identified.

(Marked Government's Exhibit B for identification.)

Q. Now I show you this Government's Exhibit B for identification, and I ask you whether this is or is not your affidavit? A. I made an affidavit that the device was placed under the radiator, not to the radiator. 212

Q. Is this the affidavit which you made, yes or no?

Mr. Corbin: Now if a point is going to be made of it, I object to it—

The Court: I sustain your objection. You can ask him whether he made any statement different from this, or if you produce the original affidavit to him you can present it to him and ask him if that is it, but to present a copy of anything and ask him if that is his affidavit, that is too broad. I will permit you to ask him whether or not he made a certain statement, anything you want to ask him about certain statements, but I will sustain an objection to the question propounded to him to answer yes or no, whether that is his affidavit, when, as a matter of fact, you say that that is only, at most, a copy, so I wouldn't require him to answer yes or not to that. 213

Q. Can you tell me whether the statement which you looked at right now appeared in the original affidavit which you made out? A. No, sir.

14 Q. It did not appear there; whatever appears here did not appear in the original affidavit? A. That is, the latter part of it.

Q. It did not? A. No, sir.

Mr. Walsh: If your Honor please, there is no question that this is the copy of the affidavit which was submitted to the court and given to the district attorney by Phillips, Mahoney & Fielding, and rather than waste time I will ask if this is an exact copy of the affidavit that was signed for the purposes of this motion?

15 Mr. Fielding: I just was going to inform your Honor that this is a copy of the original affidavit. There is no question about it.

The Court: Very well. Do you want the original?

Mr. Schachner: No.

Q. Now I want to ask you again whether this is a correct copy of the affidavit which you made out, or whether it is not? A. Well, the latter part of that don't appear correct. I do not recall making any such statement because I did not see anything like that take place.

Q. Indeed, according to your own opinion, this latter 16 part is definitely false, is it not? A. Yes, sir.

Mr. Fielding: Now—

Mr. Schachner: The witness has answered.

Mr. Corbin: Well, you cannot question that much, can you, Judge?

The Court: I will overrule the objection because as a matter of testimony it comes to the court. I will overrule the objection.

Mr. Corbin: Judge, I suppose if anything is false, it is false, whether it is definitely false or not definitely false. I do not understand that qualification.

and I do not think the witness should be interrogated 217
in that form in any event.

The Court: I will overrule the objection to that question.

Mr. Corbin: I except.

Mr. Schachner: Your witness.

Redirect examination by Mr. Fielding:

Q. Now I read from a copy of the same affidavit to which reference has been made by the assistant district attorney. In next to the last page of your affidavit, beginning at the bottom o fthe page previous, where you signed this affidavit— 218

Mr. Walsh: What page is it?

Mr. Fielding: It is the bottom of page 1 of his affidavit, verified the 4th of April.

Q. (Continuing) "These three men took up with them a dictaphone machine, its wiring equipment, and they started to install the machine and brought the necessary wires from room 1508 through a hole in the baseboard of the wall between that room and 1509, along the 1¼" steam pipe to the steam radiator in room 1509, to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509, and 219
the machine, a dictaphone, being on the floor of room 1508 with ear attachments."

Now generally, is that the correct statement of what you saw? A. Well, that is a statement, yes. I understood it was a dictaphone, although I did not go in to examine it in 1508.

Q. But that statement is true today as it was then, is that correct? A. Yes. I was told that there was to be a dictaphone installed and I labored under the impression that it was. I did not examine it.

220 Mr. Fielding: That is all.
Mr. Corbin: May I inquire briefly, Judge?
The Court: Yes.

By Mr. Corbin:

Q. This portion of the affidavit which was just read to you, reads in part as follows: " * * * that the wires were drawn from room 1508 through the hole in the baseboard of the wall between that and room 1509 along the 1¼" steam pipe to the steam radiator in room 1509 to which was attached a device, like one which is used to talk into, that device being behind the radiator in room 1509."

221 Now what is there about that that is false as you characterized it? A. Well, the statement that was made that it was attached to the radiator. It was not attached to the radiator. It was laying under the radiator on the floor. That is the statement I made.

Q. Behind the radiator? A. Yes, sir.

Q. That is, when you were asked if they attached it to the radiator itself, you did not recall that? A. I didn't.

Q. And did not recall that statement or anything that might be so interpreted, being included— A. No, sir.

Q. In your affidavit which you signed, is that right? A.

222 Yes, sir.

Q. Well, it seems here to be in this affidavit. It speaks about the steam radiator in room 1509; the words are added, "to which was attached a device like one which is used to talk into, that device being behind the radiator in room 1509."

Now when you signed this paper, Government's Exhibit B for identification, which appears to have been verified by you on April 4, 1940, did you notice that language, "to which was attached a device like one which is used to talk into"? A. Yes, sir, I did.

Q. Did you prepare this affidavit yourself? A. No, sir.

The questions was put to me and I answered them to the best of my knowledge and belief. 223

Q. Where were you when you signed it? A. In my own home, Congers, New York, Rockland County, and I went down to the Notary Public.

Q. Down town? A. The first one was Edgar H. Jolliffe, real estate man and notary public. That was the first affidavit.

Q. E. Hubbard Jolliffe? A. Right.

Q. He is a real estate man downtown? A. Real estate man.

Q. And who was it that came to your office or came to your home? A. To get this affidavit? 224

Q. Yes. A. Mr. Schulman.

Q. And did he have it written out in typewritten form when he got there? A. No, sir. He wrote it in pen and ink as I was talking.

Q. I see. A. He jotted it down on sheets of paper.

Q. And that is the form that we have it in? A. Exactly.

Q. That you signed? A. Yes, sir, written in pen and ink.

Q. I see. A. That is what was sworn to.

Q. And when you were telling him what you saw on the occasion that we have been talking about, he was writing down what you were saying, or the substance of what you were saying, at least you supposed so. Now after he had finished his job of writing out what you had said, did you take the paper and read it? A. I read it through thoroughly. 225

Q. You did? A. Yes.

Q. Well, today you say that the words, refefring to the radiator, "to which was attached a device" are inaccurate? they are wrong? A. Yes, sir.

Q. You say today that they don't state the fact? A. This outfit was laid on the floor. I didn't say "attached to the radiator".

Q. Just follow me. A. Yes, sir.

26 Q. You say today that these words "to which was attached"— A. This listening device.

Q. To the radiator, that they are wrong? A. Yes, sir.

Q. And when you read them in handwriting the day in April when you signed the original affidavit, why didn't you then say they were wrong and refuse to sign the paper? A. I didn't pay the same amount of attention to it, very likely, that I did the former statement.

Q. Well, did you go over that paper after it was written out in longhand very carefully? A. I just read it through.

Q. Each word? A. I read it through, yes, sir. I understood what it was.

27 Q. Did you then understand that you were saying or signing a paper saying that the device was "attached to the radiator"? A. No, sir.

Q. Did you intend, when you signed that paper, to sign something which was wrong or which contained any statement which was wrong in whole or in part? A. No, sir.

Q. Is it or is it not the fact that those four words "to which was attached" and which obviously referred to the steam radiator in room 1509—did you intend when you signed the paper containing those, to commit perjury? A. No, sir.

28 Q. Well, did you notice them as you read them? A. Well, I—

Q. Did you realize when you put your signature on that paper and swore to it, that it contained a statement which might be interpreted or reasonably should be interpreted, I will put it, as stating that the device was attached to the radiator? A. It was attached to the listening device. That is the way I saw it laid out on the floor. It was not attached to any radiator so I couldn't very well make a statement to that effect.

Q. Well, you did not intend to state that? A. No, sir.

Q. Did you? A. No, sir, absolutely not.

Q. So it is a fact, is it not, when you signed the paper, 229
you did not realize that anyone could interpret what you had signed as a statement that the device was attached to the radiator? A. That ain't the way I understood it.

Q. Did you tell Schulman at that time that the device was behind the radiator in room 1509? A. I did, yes, sir.

Q. And is that statement which I quote, and which is contained in the same sentence, namely, "that device being behind the radiator in room 1509," true? A. Yes, sir.

Q. And the next words "and the machine or dictaphone being on the floor of room 1508 with ear attachments." A. I didn't see no ear attachments, only the boxes and the wires. The equipment was brought in and I never saw any 230
ear phones. I did not enter that office.

Q. No, but you were there when the door was opened? A. And they brought it in and placed it on the floor.

Q. Put it on the floor? A. And I went and opened up the other door.

Q. So that those things were on the floor of room 1508? A. Yes, but I don't know what the contents of the boxes were.

Q. Of course not. Well, Mr. Schachner asked you here a few moments ago whether this affidavit was definitely false, and you said yes. Did you intend at any time that 231
it would be a false statement to any extent whatever? A. No, sir.

Q. And as soon as that was shown to you by him you said that that was not right? A. The latter part of that statement, the latter part.

Q. That is, you took issue with it the moment he read it to you here today? A. Yes, sir, because I did not make that statement that it was attached to any radiator; that it was under.

Q. Yes. So that if that statement appears there, as it does appear there, it was in the handwriting of Mr. Schul-

232 man and escaped your attention when you signed it? A. Well, possibly.

Mr. Corbin: That is all.

Recross examination by Mr. Schachner:

Q. Before you were asked about the thickness of the wire. If I show you this pencil can you tell us now whether the wire was as thick as this pencil (indicating)? A. No, it was not quite as thick as that. Offhand I do not know. I did not examine it.

Q. Was it as thick as the wire in this paper clip (indi-
233 cating)? A. No, it was thicker than that.

Q. Much thicker than that? A. Yes.

Q. In between the pencil and the paper clip (indicating)? A. Well, about an eighth of an inch or so, like a small sized telephone wire, small equipment. That is as near as I could judge.

Q. Now in that statement which Mr. Corbin asked you about, you talk about the device, the thing that is behind the radiator or attached to the radiator, as the case may be. You talk about a device "like one which is used to talk into"? A. Well, it is to pick up a conversation. That is what it is intended for.

234 Q. Now just a minute. Did you say "a device like one which is used to talk into"? A. Well, it wouldn't be that.

Q. No? A. No, sir.

Q. It was not a device like one which is used to talk into? A. No, sir.

Q. And when that appears in the affidavit, that isn't true either? A. Well, it is just for the pickup of a conversation.

Q. Is it a device like one which is used to talk into? A. Well, I have never talked into one so I don't know.

Q. But you say here, "a device like one which is used

to talk into," is that true? A. Well, something like a 235
telephone—a telephone.

Q. No. Is it a device "like one which is used to talk into"? Will you answer that yes or no. A. Well, that is what it appeared to me like.

Q. Like a device used to talk into, is that right? A. Like listen to, to pick up anything that is said. That is all I know what it is about.

Q. Now listen. You say here it was something used to talk into, is that right? A. Well, that is what I surmised it was offhand.

Q. Offhand. Now that is reasonable enough, but today when you testify you say it was like an ear piece. How 236
do you explain that sometimes you seem to think it was something to talk into and sometimes it is something to listen with? A. My contention is that it was a listening device. That is what I called it.

Q. I am not asking you what it was but just to give us a description of what it looked like. Now did it look like something to talk into or did it look like something to listen to? A. Well, it was something like the size of the old listening device from a telephone you put to the ear.

Q. Ah, in other words it was not like something to talk into? A. Well, that's the way you put it.

Q. No. Which way would you put it, Mr. Frost? A. 237
Well, it was like part of the telephone that you listen into.

Mr. Schachner: Thank you.

By Mr. Corbin:

Q. Do you have any interest one way or the other in this case? A. Absolutely not.

Mr. Corbin: That is all.

Mr. Fielding: I have no further questions.

The Court: Anything further?

Mr. Schachner: No.

238 Mr. Fielding: That is the defendant Schulman's offer of proof of illegal entry into his office and the installation of apparatus by the Government authorities. I do not know whether Government intends to dispute it or not.

The Court: Does the Government desire to offer any evidence at this time?

Mr. Schachner: Yes, your Honor, but prior to offer any evidence, I would like to be heard, if I may.

The Court: Very well, I will hear you.

239 Mr. Schachner: The Government's contention is three-fold. First, the Government will introduce evidence to the effect that no microphone was ever placed into the office of the defendant Schulman. Further, the Government will concede or claim that on that night a microphone was actually installed. However, it is the contention of the Government that that microphone was situated in an aperture located in a wall separating the two offices from each other. In that wall there was a microphone. Further, it is the Government's contention by the evidence so far offered on behalf of the defendant Schulman, that the defendant Schulman has failed to carry the burden
240 of proof that any evidence was obtained over this microphone that was in the hole, according to the contention of the Government. However, should your Honor feel that the defendant has indeed made out a prima facie case, that evidence was obtained on some microphone situated there, the Government is prepared to go on and prove that through some mishap or other it was impossible to obtain any evidence over that particular microphone. However, the Government concedes that the listening device was used in connection with obtaining proof of these

things, and indeed the Government does intend to 241
offer evidence obtained by a listening device in the course of the trial of this case. However, the listening device that actually proved productive of evidence was an entirely different one. It is a device which is placed on the wall separating room 1509, which is the defendant's office, from room 1508, which is the empty office, which the Government had obtained permission to use. Now if I may just for a moment distinguish the two devices: the Government contends wherever there was one that was in the hole of the wall, which the Government believes the defendant's witnesses seemed to assume was in Shulman's office, that listening device did not prove 242
productive of any evidence. There was a second listening device that was merely placed against the wall. It was an apparatus that makes it possible by placing it on one side of the wall to listen to conversations taking place in the next room. The Government is prepared to go and offer proof of those contentions.

The Court: Here is my conception of the law at this time, gentlemen, that if any evidence was offered that was obtained by virtue of the conversation or conversations overheard over this listening 243
device, or detectaphone—I have heard it called that; I do not know what the technical name is; I did not understand them as dictaphones, but anyway, the instrument that has been described by the witnesses for the defendants.

It is my conception of the law that if the Government agents went there and obtained permission through the employes of the office building, without the consent of the defendant, and installed this listening device in his office, in the office of the defendant, and carried the wires through to another office and

244 there obtained competent evidence or material evidence against the defendants, that that would be an invasion of the defendant's rights, and if such evidence were offered, if such evidence be offered, would be objectionable.

On the other hand, if the evidence offered by the Government should be, as stated by the district attorney, obtained by the officers of the Government, who obtained permission to go into room 1508 and install the device on the walls of 1508, on the inside of 1508, so that they could hear what was going on in the other office, that that would not be an invasion
245 of the constitutional rights.

Now I never had this question presented to me before, but from my general knowledge of the violation of the search and seizure, of the rights of a man, I think that here a trespass would be committed if they fraudulently gained admittance or if they gained admittance to a man's private office without his consent and obtained evidence against him. Then I think the trespass is committed when they enter that office without his consent, or in effect fraudulently get into the office. For instance, the courts have held that while ordinarily the testimony of State
246 officers is admissible, the constitutional provision does not apply to them, but if the Government officers procured the aid of the State officers in making an unlawful search, then the testimony of the State officers is objectionable. So that if the Government agents here obtained the permission and co-operation of the engineer and the superintendent of that building and gained admittance to that office and there installed the device, then they committed a trespass, and the evidence would not be admissible. If I am wrong on that, if you want to be heard on that, I

will hear you. But on the other proposition, if the 247
evidence was obtained by installing the device against the wall in room 1508, it would be admissible. Of course there is no testimony upon this, or whether the Government intends to offer evidence that it was unlawfully obtained or not. So as it now stands, I do not see any ruling for the Court to make other than that the Court would announce at this time, in the absence of further argument and convincing authorities, that if evidence was obtained in the manner shown by the defendant, claimed by the defendant here, that that evidence would be objectionable. That is all that I see before the Court now. 248
Of course I will permit, if the Government wants to put its testimony on now, to show what it proposes to show, and I will permit you to do that. On the other hand, I think the Government has another course open to it. You can offer any evidence upon the trial of the case, but I will say now, unless you desire to be heard upon it, that if any evidence comes out or is sought to be brought out that was obtained through the device shown by the defendants to have been installed there, then that testimony I think would be objectionable.

Mr. Schachner: Your Honor, the Government feels 249
that the law as expounded by your Honor is quite adequate to sustain the point of the case of the Government. However, I think it would be advantageous if the Government could at this time affirmatively establish that no evidence was obtained over that microphone irrespective of where it was placed. It is the contention of the Government that there was no microphone in the defendant Schulman's office. However, wherever that microphone was, no evidence was obtained over it, and if your Honor feels that

this is proper procedure, I would respectfully suggest that for appeal purposes at this point, after the Government has offered evidence to that effect, an affirmative finding of fact be made so that the record be perfectly clear at this time as to the type of evidence the Government intends to offer in this case, and I think it can be done more conveniently at this time than have the trial interrupt it.

The Court: Well, I think so myself. I just did not want to be suggesting how the case ought to be conducted. Of course the question whether or not any evidence was unlawfully received or obtained is a question of law for the Court to decide, and if there is a dispute about it, then it is a matter that ought to be made before the jury is chosen, or at least out of the hearing of the jury. So I will permit you to proceed as you wish.

Mr. Fielding: If your Honor please, for the record I would like to say that I will reserve my rights at any time during the course of the trial to raise the same question.

The Court: Yes, you may do that. I think that is necessary. I think this is just like any other question of an alleged unlawful search and seizure. The procedure is first a motion to suppress the evidence, and then if it should be overruled, why then an objection be made as and when the testimony is offered before the jury. Very well.

Mr. Corbin: And may that ruling apply to the other defendants also?

The Court: Yes, that may apply to all the defendants.

JAMES W. RANSOM, called and sworn as a witness for the 253
Government, testified as follows:

Direct examination by Mr. Schachner:

The Court: Mr. District Attorney, do you controvert the question of the announcement of law? I do not mean for an admission, but I mean your judgment of it, which I announced, that if it were assumed that this testimony was received over a device installed, as testified by the witnesses for the defendant, is it your judgment that that testimony would still be admissible or not?

Mr. Schachner: Your Honor, if that question were 254
raised now,—I realize I am now speaking without any binding effect—.

The Court: Yes, without any binding effect or concession or anything. I am not asking for that.

Mr. Schachner: I have been unable to find any authority conclusive one way or another. I think it is possible for the Government vigorously to contend that hitherto anything obtained in violation of the search and seizure provision of the Fourth Amendment to the Constitution had to be something substantial, something concrete, something that can be searched for and something that can be seized, and 255
that the law and the procedure that grew up in connection with that whole field of law is reasonable in terms of concrete things, but when we get to questions of listening to a conversation, that is a wholly novel question of law, and the Government would then contend that that wholly novel question of law should be resolved in its favor. However, it so happens, as in this case the Government is quite willing to concede that it is probably academic, in view of the fact that no evidence was obtained.

The Court: Very well, you may proceed.

256 By Mr. Schachner:

Q. Mr. Ransom, you are a special agent employed by the Federal Bureau of Investigation, are you not? A. That is right.

Q. Now do you remember installing a listening device in Room 1508 in the building at 277 Broadway in the City of New York? A. I do.

Q. And that was on or about April 7, 1937? A. Yes.

Q. Did you—

Mr. Corbin: On or about. May we have the date, if he knows.

257

Q. Do you know the exact date? A. Yes, it was April 6, 1937.

Q. Was it late at night, April 6th? A. It was about ten-thirty p. m.

Q. Were you alone there? A. No, I was not.

Q. Who accompanied you? A. Mr. Turner.

Q. You and agent Turner went there? A. That is correct; yes, sir.

Q. Now, what did you do there? A. Well, after arriving at the building we installed a microphone in an aperture in the wall between 1509 and 1508.

258 Q. Did you connect that microphone by wire with a listening device or amplifier? A. The microphone was connected by wire to an amplifier also located in room 1508.

Q. Was that microphone situated in room 1509? A. It was not.

Q. Well, after you installed it, what did you do? A. We tested it to see whether it was functioning properly.

Q. And after you had tested it, what did you do? A. We then disconnected the amplifier and returned with it to the office.

Q. What did you leave in room 1508? A. In 1508 there

was only a small piece of wire leading from the microphone 259
into the room.

Q. And the microphone was left in that hole in that wall? A. It was left in the hole in the wall, yes.

Q. Was that all that you left there? A. That is correct.

Q. Did you leave any box or anything there? A. No, sir.

Q. About what time did you leave that place? A. Oh, I would say shortly after eleven.

Q. Did you ever go back there? A. No, sir.

Q. You did not listen to any conversations of the defendant Schulman there? A. No, sir.

Mr. Schachner: Thank you. 260

Cross examination by Mr. Fielding:

Q. How large was this microphone that you used? A. This particular microphone is approximately an inch and a quarter in diameter. It is circular, an inch and a quarter in diameter, and possibly an eighth of an inch in thickness.

Q. Do you claim there was an open hole between room 1508 and 1509? A. Yes, there was a hole.

Q. Weren't the steam pipes running through that aperture? A. To the best of my recollection there was a pipe in there—yes. I don't know whether it was running through or in along the wall, but there was a pipe of some sort 261
in there, I know.

Q. Well, how could you put an instrument, having the dimensions you stated the dimensions to be, inserted in that hole where this pipe was running through? A. There was sufficient space there between the pipe and the outer circle of the hole.

Q. How did you get into room 1508? A. I went in with Mr. Turner and a third party. I beg your pardon, into what room?

Q. 1508. A. I went into 1508 with Mr. Turner.

262 Q. Was any officer of the building with you? A. To the best of my recollection, no.

Q. How did you get in? A. He opened the door and we walked in.

Q. Who opened the door? A. This building representative.

Q. But I say, there was a member of the building with you? A. You said in the room. I said not in the room.

Q. He did not go in the room? A. No, he did not.

Q. Would you recognize him if you saw him? A. No, I don't believe I would.

Q. Were you one of the gentlemen who went over to
263 Brooklyn to see the superintendent, Mr. Raynor? A. No, sir.

Q. And your first knowledge in connection with the matter was to go into room 1508, being let in there by a representative of the building, and installing what you just testified to? A. Yes, sir.

Q. You never went into Room 1509? A. Yes, I went into Room 1509.

Q. And 1508? A. That is right.

Q. And 1510? A. No, I did not go into room 1510.

Q. Well, 1509 is Mr. Schulman's office, isn't it? A. Well, I assume that it is. That is the room I was in.

Q. You were in that room? A. That is right.

264 Q. Why did you go in there? A. I went in there to see where the most logical place would be to place the microphone.

Q. And you selected this hole in the wall as the proper place? A. That is right.

Q. You say the microphone did not physically appear in any part of Shulman's office? A. That is correct, yes.

Q. Did you pull any wires through from 1508? A. Yes.

Q. Pulled them through that hole in the wall? A. No, just to the wall.

Q. To the wall? A. That is right.

Q. Where did you start, in room 1509 or 1508? A. I think we started in room 1509. 265

Q. You had a wire in there first? A. No, the wire was pushed in from room 1508.

Q. Oh, by one of your party? A. Yes.

Q. And then did you physically help to pull it through? A. Yes.

Q. How far did you pull it through? A. You mean past the wall?

Q. Yes, into room 1509. A. Just a sufficient distance to make the connection to the microphone, and then it was pushed back in.

Q. So at one time it was in room 1509? A. Yes. 266

Q. And you were led into that room by a representative of the building, knowing it was the room of this defendant, the office of this defendant Schulman? A. I don't whether at that time I even knew the gentleman's name who occupied the room.

Q. Didn't you see any name on the door? A. I don't recall.

Q. It had a door, is that right? A. That is right.

Q. Now did any one of the representatives of the building go into room 1509 with you and the other gentleman? A. To my recollection, no. They may have gone in there just momentarily and then left. They weren't in there for a length of time. 267

Q. But you wouldn't say they weren't in it? A. No, I would not.

Q. Did you go back into room 1508 after being in room 1509? A. Yes.

Q. Did you have anything to do with hooking up the apparatus? A. To which apparatus do you refer?

Q. The one that you are referring to, to the microphone and the wire in the wall? A. I hooked up the microphone with the wire, yes.

268 Q. And did you also hook it up for the dry cells or whatever power you used? A. To the amplifier in room 1508.

Q. You hooked that up? A. Yes, sir.

Q. So when you left that it was a working unit, so far as you know? A. It was a working unit. Before we left we dismantled it, before we left.

Q. But it was working some time before you left? A. That is right.

Q. The operation being installed by you? A. That is right.

269 Q. How long were you there on that occasion? A. I beg your pardon?

Q. How long were you in the building on that occasion? A. Well, I imagine about a half hour, possibly 35 minutes.

Q. You went there about what time? A. I believe about ten-thirty.

Q. At night? A. Yes, sir.

Q. And you were all through by eleven? A. To the best of my recollection, I would say eleven, or five minutes after.

Q. And did you dismantle the apparatus before you left? A. Yes, sir.

270 Q. What did that consist of? A. Simply disconnecting two wires from the amplifier.

Q. They could be hooked up again without any trouble? A. Yes.

Q. So that it would be available, the apparatus would have been available the next day, to hear a conversation in 1509, so far as you were able to fix it up? A. Yes.

Q. And all that it needed was somebody to walk in there and adjust the two wires to the source of power and it became, with the amplifier, a working machine? A. Yes, that is right.

Mr. Felding: That is all.

Cross examination by Mr. Corbin: 271

Q. Mr. Ransom, when you went into 1508 the first time that night it was around ten-thirty? A. That is the best of my recollection; yes, sir.

Q. Because 1508 that was the first room you went in? A. I believe so.

Q. What did you take into that room when you went in the first time? A. A small amplifying case.

Q. For the microphone? A. Yes.

Q. No other sort of apparatus of any kind? A. No, sir.

Q. So that it was your thought to install the microphone and that only on that occasion? A. That is right, yes. 272

Q. And that is all that you did install on that occasion, is that right? A. That is right.

Q. Now you had never been into 1509 before, had you? A. No, I had not, sir.

Q. Or 1508 or 1510? A That is correct.

Q. Did you have any plan or layout of the office furniture in 1509? A. No. I don't believe so.

Q. So that when you went from 1508 around into 1509 one purpose was to see where the desk was and where the chairs were and where the instrument could be most advantageously located? A. Well, I think it had been described to me as to what was there. 273

Q. I see, that was your purpose? A. That was one purpose, yes. That is right.

Q. That was one purpose, that is what I mean. It was a necessary purpose, wasn't it? A. Yes.

Q. When you were in 1508, before you went into 1509, did you have a light on in 1508? A. In the room in which we were?

Q. Yes. A. Oh, yes.

Q. Did you have a flashlight with you? A. I don't recall.

274 Q. You won't say you did have? A. I won't say I did and I won't say I didn't.

Q. You don't know one way or the other? A. I don't recall.

Q. Did your partner have one? A. That I don't know.

Q. Did you use any? A. I don't know whether I did or not. I couldn't recall.

Q. Did he use any, so far as you know? A. I don't recall whether he did or not.

Q. When you were in 1508 before you went in 1509, there was no light in 1509, was there? A. That I don't know.

275 Q. You couldn't tell from 1508 whether or not there was a light in 1509, could you? A. I don't recall whether I made any effort to tell or not.

Q. Will you search your memory on that? A. Well, I don't know. There may have been and there may not have been.

Q. Did you have your head down to the baseboard located under the hole along the inch and a quarter iron pipe in 1508 before you went into 1509? A. I didn't have my head down to it, no. I noticed it there.

Q. You saw a hole? A. Yes.

Q. And you saw that the pipe did not fit accurately
276 in the hole, is that it? A. Yes, that is right.

Q. So you did not look down and your partner did not look down to see what the condition of that hole was? A. No, I didn't. I didn't look down. I said I noticed the hole. I didn't put my head down to look through it.

Q. Then you couldn't see and did not see what the size of the hole was on the other side of the partition did you? A. That is right.

Q. So you had to go into 1509 to find that out, didn't you? A. Yes.

Q. And you went into 1509 for that second and necessary purpose? A. Yes.

Q. Right? A. Yes. 277

Q. Did you have anything to do with using any other instrument on the wall or otherwise in that 1508 or 1509? A. No.

Q. You have been here for the last half hour and have heard a discussion, haven't you? A. Yes, sir.

Q. So far as any incident of the installation of some apparatus, that is, against the wall, that you can hear through or that draws the sound through the walls, you don't know anything about that? A. Not in this particular case, no.

Q. You know what those instruments are? A. Yes, sir.

Q. You operate them? A. I have installed it. 278

Q. And operated it; to test it, at least? A. Yes.

Q. You have heard all the facts and results? A. Yes, sir.

Q. You have seen it in operation, in other words? A. Yes.

Q. Know the instrument well, do you? A. Yes, sir.

Q. Which the Government uses, is that right? A. That is right.

Q. And which they did use in April of 1937, is that right?

Mr. Schachner: Judge, he testified he wasn't there. He does not know what was used. 279

Q. I say, you know what instruments of that general character were in use in 1937, do you not? A. I know what instruments are available, yes, for that type of work.

Q. And were those? A. Yes.

Q. All right. What do they call it? A. Well, the name that I have for them is detectophone.

Q. Detectophone? A. That is right.

Q. And they operate by electric power? A. Well, now—

Q. What is the motive power, the operating power? A.

280 It is used with a crystal microphone connected to an amplifier similar to a radio.

Q. It is electricity? A. Yes.

Q. And it is the power of electricity upon the air, or technically its contact with the electricity in the air, is it not, that permits those machines to draw the sounds through rather solid substances? A. No, sir.

Q. Or materials? A. No, sir.

Q. What is it that draw the sound through so that you can amplify it on the other side? A. It is a sensitive needle working against the wall which picks up the vibrations, sound vibrations.

281 Q. Well, picks them up by way of electric power? A. Not to pick up, no. The electric power is simply an amplification. The sounds are picked up by a delicate needle which is placed against the wall and which in turn operates against a crystal.

Q. So that a conversation in this room may be picked up in the next purely by virtue of the vibration which the conversation itself causes? A. That is right, yes, sir.

Q. In the wall between the two rooms, is that right? A. That is right.

Q. And that detectophone or dictograph, is it? A. Detectophone.

282 Q. That operated by picking up the vibrations caused by the conversation in the wall, is that it? A. That is correct.

Q. And without any wire or opening or any other assistance leading into the room in which the conversation occurred? A. No, there is a wire leading from the microphone to the amplifier, but there is no wire leading into the room; that is correct.

Q. And that wire from the microphone to the amplifier is only for the purpose of amplifying the sound? A. That is right, yes.

Q. The vibrations that the microphone records, isn't that so? A. That is right. 283

Q. Now those were in use in 1937 in April? A. Yes.

Q. By the Government in this district here in New York? A. Well, whether they were in use or not, I don't know. They were available for use.

Q. In the operation of those detectophones, does it matter at all where they are placed? A. You are referring now to the one placed against the wall, sir?

Q. Yes, that is what I mean. A. It depends a great deal upon the structure of the building, whether they operate satsifactorily or less satsifactorily.

Q. Do you have to test those before you use them on an ordinary office building wall? A. Well, it could be done. It could be tested. 284

Q. That is your ordinary practice? A. Yes, if the opportunity affords.

Q. That is, to go in the other room and have a conversation and then see where on the wall of the room in which the machine is installed it picks up the conversation to the best advantage? A. If the opportunity presents itself, yes.

Q. Is there some other way of installing them except against the wall? I suppose on the floor or ceiling they operate equally well, do they? A. Well, that depends on the type of material; not necessarily. A wall might be thicker than a floor and vice versa. 285

Q. Yes. It might be a stone wall. Can you take that through a stone wall? A. It is possible, yes.

Q. What about this wall, having in mind the wall between 1508 and 1509? Could one of those things be put on the wall of 1508 anywhere—top or bottom, or one end of the wall or the other end of the wall, to the same advantage so far as hearing a conversation in 1509 is concerned? A. I don't know. I didn't try it, sir.

Q. Well, you saw that while there. You know the gen-

286 eral character of it, don't you? A. I couldn't tell you now where it was placed or what it was.

Q. So that you couldn't tell without further examination and some testing, whether that instrument could be placed or it could be operated successfully on any part of the wall of 1508? A. It might be; it might not. I couldn't say.

Q. Thank you. Now, so far as the microphone is concerned that you installed that night, that was physically installed while you were—you yourself were physically in 1509? A. That is right.

Q. Doing the work? A. Yes, sir.

Q. And how thick did you find that wall to be along
287 the pipe? A. I couldn't answer that. It may have been six or eight inches. It may have been three or four inches.

Q. Well, do you know how far back in the hole you placed that microphone? A. Oh, I at least placed it—oh, I would say maybe an inch. That is, the edge towards the room 1509 was placed, I would say, an inch.

Q. An inch inside the line of the wall paper? A. Yes.

Q. The wall surface of 1509. Is that your best judgment? A. That is the best of my recollection.

Mr. Corbin: That is all.

288 Cross examination by Mr. Mintzer:

Q. Just one or two questions: After you installed this detectophone and microphone, did you go into Mr. Schulman's office to make some tests as to whether it worked or not? A. Are you referring to the microphone in the hole, sir?

Q. Yes. A. Yes.

Q. You went into Mr. Schulman's office and talked to see whether your partner could pick up a conversation? A. Yes.

Q. Is that right? A. Yes.

Q. And did it work? A. I believe it did. He told me 289
that it did.

Q. And then I believe you said that after you tested it you dismantled it, is that correct? A. I removed the wire—disconnected the wire from the amplifier.

Q. Why did you do that? A. Because it isn't the practice to leave equipment of that type any place other than our own office with no one to take care of it.

Mr. Mintzer: That is all.

By Mr. Fielding:

Q. Did you dismantle it at any time? By dismantling, 290
I mean take the microphone out that you left in the hole that night, at any later time? A. No, sir.

Q. So the last you had to do with the matter, so far as those rooms were concerned, was what you told us you did on that night? A. That is right; yes, sir.

Q. When you left it, it was working O. K.? A. No, it wasn't working O. K. when I left. Technically it had been working but I disconnected it when I left. It was working before I left, yes.

Q. That is, like hanging up a receiver? A. That is right.

Q. All you have to do is take the receiver off? A. Yes, 291
sir.

The Court: You disconnected it and left it there?

The Witness: We left the microphone there but didn't leave the amplifier there.

By Mr. Mintzer:

Q. The face of the microphone faced Schulman's room, did it not? A. Yes.

Q. Which way did it face? A. Well, sort of alongside the pipe, between the pipe and the wall.

Q. On a slant? A. That would be more like it, yes.

292 Redirect examination by Mr. Schachner:

Q. Mr. Ransom, did you leave any wire in Mr. Schulman's office, that is, room 1509? A. None whatsoever.

Q. What type of wire do you use for such purposes, can you tell me? A. Yes. It is a very fine black enameled wire, approximately a 64th of an inch, in diameter, at the outside.

Q. Would it be easily visible? A. No, it is practically invisible.

Q. Tell me, you have various types of microphones, do you not? A. Yes, sir.

293 Q. And can you tell me what type the microphone was that you left in the wall between 1508 and 1509? A. Yes. It is what is known as a carbon microphone.

Q. Do you know whether the detectophones—the things that you put up against the wall to listen to—what happens on the other side of the wall? Do you know whether they work with carbon microphones? A. No, that is a crystal microphone.

Q. Can you tell us which one is the more sensitive instrument, the carbon microphone or the crystal microphone? A. The crystal microphone.

294 Q. Can you tell us from your knowledge of that type of listening equipment whether a microphone put alongside of steampipes isn't very likely to pick up a great deal of noise from the steampipes and thereby make it impossible to listen to the conversation taking place? A. Yes, particularly with a carbon microphone because the granules become disturbed and create a hissing sound.

Q. And late at night, when you were listening there and testing that microphone, there was of course little noise in the steam pipes? A. That is right.

Q. Will you tell us whether the wire is as thick as the wire of this paper clip (indicating)? A. Much thinner.

295

Q. Very much thinner? A. Well, not more than half that diameter at the most.

Q. From your knowledge of listening devices that can be placed against the wall in order to find out whether a conversation taking place in the next room can be satisfactorily picked up by the listening device, is it necessary to do more than to take that listening device, place it against the wall and move it around along the wall until a spot is found which is most advantageous for the reception? A. That would be the usual way of doing it, yes.

296

Mr. Schachner: Thank you.

Recross examination by Mr. Fielding:

Q. Was any member of your party identified with fixing the crystal type of microphone in the other room, to your knowledge? A. I wasn't there when that was fixed.

Q. But you do not know whether the gentlemen who accompanied you installed this other microphone? A. I do not know.

Mr. Fielding: That is all.

297

HAROLD O. SCHROEDER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Schroeder, you are an accountant employed by the Securities and Exchange Commission, are you not? A. Yes, sir.

Q. And during 1937 you were a special agent employed by the Federal Bureau of Investigation, were you not? A. Yes, sir.

Q. And do you remember whether or not you installed

298 a listening device, or listening devices, at 277 Broadway, in the City of New York? A. I did.

Q. Now when did you go to 277 Broadway? A. On April 7, 1937.

Q. And at what time of the day, do you remember that? A. At about 2.30.

Q. At about 2.30 in the afternoon? A. That is right.

Q. When you arrived there, to which office did you go? A. To room 1508.

Q. How did you get in, do you remember that? A. I went with two other individuals, one of whom had a key.

Q. Do you remember the names of the individuals? A.
299 Mr. Tufrner and Mr. Rubenstein.

Q. I take it one of these individuals used the key to open the dor and you walked in, is that right? A. Yes, sir.

Q. Now what did you find in the room when you came in? A. The room was vacant. There was a piece of wire coiled up and laying on the floor.

Q. And was there a microphone there? A. Not visible.

Q. But did you find one there? A. Yes. There was one attached to the wire and concealed in the wall.

Q. Do you know where it was? A. Yes, it was in a
300 hole in the wall near the baseboard in the wall between roms 1508 and 1509.

Q. Did you connect anything to that wire that was coiled on the floor? A. Yes. I had brought a small amplifier with me which I connected to the wires that were connected to this microphone.

Q. And did you connect anything to the amplifier? A. Yes, a pair of head sets.

Q. And that installation would ordinarily make it possible to listen to whatever sound waves struck the microphone, would it not? A. Yes, sir.

Q. Now on that particular occasion do you remember

whether or not it was possible to listen over that installation to conversations taking place near that hole? A. On that particular occasion the microphone noises were so loud in the earphones that the conversation and other things that were intended to be picked up couldn't be distinguished. 301

Q. Did you also install another listening device that would mak it possible to pick up a conversation in the adjoining room? A. I did.

Q. How did you install that? A. That was what was known as a contact microphone, and it was installed merely by placing it against the wall between 1508 and 1509, and then affixing it to the wall with adhesive tape so that I wouldn't have to hold it. 302

Q. How did you find out which spot you ought to place it against on the wall? A. I kept moving it around the wall until I found a spot where the sounds then going on in the adjoining room would be most advantageously heard.

Mr. Mintzer: May we have the date of that, Mr. Schachner?

Mr. Schachner: The witness testified April 7th.

Q. And on that day you moved this around until you found some spot and then you used adhesive tape, did you not? A. Yes, sir. 303

Q. To hold it against the wall? A. Yes.

Q. And did you connect an amplifier with that microphone? A. Yes, sir; the amplifier and two head sets.

Q. And two head sets. Did you test that installation? A. I did.

Q. Did you find it to work more satisfactorily than the other? A. Considerably so.

Q. Now what did you do with the other installation after you had completed this one? A. Well, after I had completed this one it was left there for a short time until

304 about five o'clock, when I dismantled the first one, took the amplifier and disconnected it from the wire, and drew the microphone back in through the hole, into 1508, and tacked it up.

Q. I take it that you had tested it for some time? A. Yes.

Q. Before you decided on this? A. Yes. We had been testing it for about an hour or so before we decided on one as against the other.

Q. And did you decide definitely that one would be useless? A. That is right.

Q. And that is the one which you dismantled again?
305 A. That is right.

Q. Did you listen to any conversation over that second installation, the one against the wall? A. Only during the period while they were testing it.

Q. Do you mind repeating it? A. I say only during the time while they were testing it.

Q. Did anybody take notes of that test, or did you make notes as to what you heard? A. Well, Mr. Bodinger, the stenographer, used one head set, and the other head set was taken apart, and one ear phone was used by Mr. Turner.—

Q. I am sorry to interrupt you, but I just want to fix
306 it. Which installation are you talking about now, the one that was placed against the wall or the one in the hole? A. The one that was placed against the wall.

Q. Oh; I want to know whether you took any notes of a conversation or whether the conversations were intelligible enough for you to take notes with that device that was in the hole? A. Oh, no, none at all.

Q. Did anybody else take notes or listen to it? A. No.

Q. Now will you describe in some detail the type of noise that you heard and why you couldn't listen to any conversation with the microphone in the hole? A. It is

a characteristic crackling and hissing sound that comes 307
from carbon microphones when they are placed in position where they are subject to outside interference.

Mr. Schachner: That is all.

Cross examination by Mr. Fielding:

Q. You say Mr. Turner was one of that group? A. Yes, sir.

Q. You said that Mr. Turner was one of the group? A. Yes, sir.

Q. And is that the same Mr. Turner that was with Mr. Ransom? A. Yes, sir. 308

Q. When they went into room 1509, Mr. Schulman's room? A. Yes, sir.

Q. Mr. Turner had a pretty good layout in his mind's eye on the Schulman's office layout, didn't he? A. Yes, sir.

Q. Didn't that help you somewhat in picking out a good spot to listen to the conversation? A. It did.

Q. You say you got up there at half past two? A. Approximately that.

Q. And you stayed there until when? A. Well, I would say I stayed there till about six or six-thirty.

Q. Who had the key to get in that room? A. Either Mr. 309
Turner or Mr. Rubenstein; I don't remember which.

Q. Well, did you know where either one of these gentlemen got the key? A. No, I don't.

Q. They had previously been the gentlemen who asked the superintendent's permission to open up those two rooms, is that correct? A. So far as I know, yes.

Q. So that for all you know, the key to 1508 might have been left with Mr. Turner all during the time that he was engaged in this work? A. Yes, it may have been.

Q. What time did you say the stenographer got there? A. Oh, about 3.45 or 4 o'clock.

310 Q. Well, who told him to come there? Who told the stenographer to come there? A. I don't know.

Q. Was it by prearrangement? A. I understood that one was coming.

Q. Well, who gave those instructions? Mr. Turner, to your knowledge? A. I don't know.

Q. Do you know who did? A. No, I don't.

Q. Now you said that the stenographer had on one set of earphones where there were two ear pieces? A. That is right.

Q. And that Mr. Turner had one on and— A. That is right.

311 Q. And the other gentleman—I did not get his name? A. Mr. Rubenstein.

Q. (Continuing) Mr. Rubenstein, he had the other earphone? A. That is right.

Q. And did you hear any yourself? A. When I first made the installation I listened to the sounds coming from the other office until I was satisfied that it was working properly.

Q. Was any part of that apparatus tied up with the amplifier that had been brought there before? A. None at all.

Q. In connection with the carbon microphone set? A

312 No. There were two distinct installations.

Q. What was the source of the motive power of this second described microphone? A. Well, the wall, the contact microphone?

Q. Well, that is the agitation puts the sound waves into the contact? A. That is right.

Q. And then they run along the wire? A. That is right.

Q. And where does that wire terminate? A. In the amplifier.

Q. In the amplifier. Well, did you bring another amplifier that day? A. Yes. I had two amplifiers that day.

Q. Two? A. Yes. 313

Q. Who were in the room at the same time? A. That is right.

Q. One attached to the carbon microphone set and the other to the crystal microphone set? A. That is right.

Q. Did you hear any conversations over the "mike" that was installed in the wall? A. We could tell roughly that somebody might be saying something but you couldn't distinguish what was being said.

Q. And acting on that information you then went to the good set? A. Yes, sir.

Q. But for leads you depended on the microphone set, the carbon? 314

Mr. Walsh: I object to the form of that question. It calls for a conclusion. "The leads." There has been no "leads" testified to yet.

The Court: I will overrule the objection. This is cross examination.

A. I don't understand what you mean by "leads".

Q. Well, you first hear some agitated condition over this carbon microphone and then you make sure what was coming out by taking it down on earphones? A. No.

Q. Well, tell us how? A. The two instruments were installed more or less simultaneously, and the tests were made practically simultaneously for the purpose of determining which instrument worked the better, it being the intention that the stenographer be assigned to the better instrument, if one should work better than the other; as it developed, one didn't work at all. 315

Q. That is, as I understand it, what you did when you went in there that afternoon was to hitch up what the previous witness had just testified to be dismantled? A. That is right.

Q. To make that set complete? A. Yes, sir.

316 Q. And then you installed this other and separate device? A. Yes, sir.

Q. And you heard nothing said over the carbon circuit? A. Oh, it is possible that a word here and there might be distinguished, that you might know something was going on, but there was no continuity or anything that would be of any value in any way.

Q. Well, was it used in any way? A. No, it wasn't used at all.

Q. Not even as a guide as to what might be coming over the other one? A. No, it didn't have to be.

Q. Now the door was closed all this time, I suppose? A.
317 Oh, yes; you mean the entrance door to the corridor?

Q. Are you sure of the date? A. Yes, sir.

Q. How are you sure? A. Because I have got some pencilled notes in my pocket that I made at the time.

Q. And you have refreshed your recollection by looking at those notes? A. I have.

Q. Were you there on April 9th? A. No, sir, I was not.

Q. Was any other member of the Federal Bureau of Investigation there to your knowledge? A. I haven't the faintest idea.

Q. I beg your pardon? A. I say I haven't any idea.

318 Q. Was it cold weather or hot weather or in between? A. I didn't make any point of noting it or recalling it.

Q. Well, do you recall the condition of the weather? A. Just a normal day so far as I can recall.

Q. A normal day in early April? A. Yes.

Q. And to your best recollection you wouldn't say that it was a cold day? A. No, there was nothing about it to make me recall it. There was no reason for my making any note of the point, of trying to remember it.

Q. Well, when you pulled out that microphone, back into 1508, did you recognize or feel whether or not there was any heat turned on? A. I don't know.

Q. You do not know? A. No. 319

Mr. Fielding: That is all of this witness.

Cross examination by Mr. Corbin:

Q. Were you there continuously from 2:30 until five? A. Until somewhat later than that.

Q. Till after 5? A. I think it was possibly six or six-thirty when I left.

Q. Were you there continuously then from two-thirty to six-thirty? A. Yes; I didn't leave the room.

Q. And did you make notes as to the time when the stenographer arrived? A. I believe I did (examining paper). 320

Q. Are you referring to your original notes now? A. I am referring to a set of notes that I dictated immediately after coming back, but I didn't make a note as to the time of the arrival of the stenographer.

Q. May I see what you just looked at?

Mr. Walsh: I object to that if your Honor pleases.

The Court: Yes, I sustain the objection.

Mr. Corbin: May I ask that the paper from which the witness refreshes his recollection be marked for identification?

The Court: Yes, it may be marked for identification. 321

(Marked Petitioner's Exhibit 2 for identification.)

Q. And what was the yellow paper that you had with this paper that has just been marked for identification? A. Those are the pencilled notes that I made during the time that I was installing the equipment.

Q. On the very day in question? A. Yes, sir.

Q. And they are in the same original form now that they were then, is that right? A. That is right.

Q. And they assume or you assume them to recount what

322 was going on at the time, as it occurred, is that right? A. With regard to what I was doing, with regard to the making of the installation.

Q. Well, matters that you have covered in your direct examination here today? A. That is right.

Q. May I see that paper? A. No, sir.

Mr. Walsh: I object to that, if your Honor please. He hasn't refreshed his recollection from that paper. It is the other paper which did refresh his recollection, which is now marked Petitioner's Exhibit 2.

The Court: Let me see that paper and then I can
323 independently rule on that. As I recall, his answer was he testified that he made no memorandum of the arrival of the stenographer. (Paper handed to the Court.)

Yes. I will sustain the objection and not require the witness to produce the document to counsel for the defendant. I would like to say for the benefit of the record that I have read the notes, and so far as the trial court can see, there is no relevancy in this particular document to the investigation that is now being cross examined about. But it does contain other matters which should not be disclosed at this
324 time, and I cannot see where it could possibly throw any light upon the question now being inquired about, and for that reason I will decline to require him to produce it.

Mr. Corbin: May I respectfully except?

The Court: Yes.

Mr. Corbin: And may I claim the right and privilege to determine for myself the materiality and relevancy of the matter contained in the paper. I just state for the record so that my position may be clear.

The Court: Yes. You may have the full ad- 325
vantage of any exception that you desire.

Mr. Corbin: That is right.

The Court: The question that was propounded to him was whether or not he had any memorandum as to what time the stenographer appeared, and I believe that he replied to it that he had no such record. There is not anything in the document, as read by the Court, which would contradict that, so I will sustain the objection.

Mr. Corbin: Well, my point in asking to have an inspection of it was not confined to that one subject. My thought was, and my suggestion now is, that I 326
have a right to examine any paper containing any notes made by the witness at the time of the transaction, as to which he first asked about on direct examination. I claim that as a matter of right.

The Court: Very well. I will overrule your objection and allow you an exception.

Mr. Corbin: And that relates to all of his testimony, he having already told us that this paper contained notes made at the time as to the matters concerning which he has been asked about on direct examination.

Mr. Walsh: It is not relevant at this time, if 327
your Honor please.

The Court: Yes, it is not relevant at this time. That is the ground upon which I sustained it. The only question before the Court now is as to the admissibility of any testimony that is claimed to have been obtained by the detectaphone or a dictaphone, and the notes made at that time might or might not be relevant, but having examined those, I do not see the relevancy of it. I could see where probably it would be improper to let the defense see that docu-

28 ment at this time, so I will sustain the objection of the Government, decline your request, and of course the witness being on cross examination, if I am in error about it, if it is admissible, you have your exception.

Mr. Walsh: May I ask at this time that the second sheet of paper, the yellow piece of paper, be marked for identification so that we won't have any question about what Mr. Corbin has been talking about?

The Court: Yes.

(Marked Petitioner's Exhibit 3 for identification.)

29 Mr. Mintzer: May that objection and exception accrue to all defendants?

The Court: Yes, that accrues to all defendants.

Mr. Corbin: Now, if your Honor please, may I refer to Exhibit 2 for identification and have a ruling on it, as to my right to see that? I claim the absolute right to see the paper, it having been marked for identification.

The Court: That is Exhibit 2, that is the yellow sheet?

Mr. Corbin: No, that is the white sheet.

The Court: The white sheet. Let me see that 30 white sheet. (Same handed to the Court.)

Mr. Walsh: I object to that on the same grounds. It is not relevant at this time, as far as this preliminary motion is concerned.

The Court: The Court has read Exhibit 2 for identification, and after having read same is of the opinion that it has no relevancy to the question now being investigated on, in the consideration by the Court. It does contain matters which should not be furnished to the defendants at this time upon this particular hearing, and it being the opinion that the instrument has no bearing upon this question I

sustain the objection of the Government and decline 331
to let counsel for the defendants see the exhibit, and return it to the witness and allow all the defendants all exceptions to this ruling.

Mr. Corbin: May I similarly suggest, for the record, my attitude with respect to this paper, namely, that it is a matter of right in the defendants and in those that I represent, particularly to have their counsel determine for himself the relevancy or materiality of the paper in order that he may be then equipped to determine whether cross examination thereon is proper to continue?

The Court: Yes, you may state it on the record. 332
Let the record so show, and the Court declined to permit the request to see it.

By Mr. Corbin:

Q. Did you make any notes that day on anything that you heard that day over the microphone that was installed in the hole in the wall? A. No, sir.

Q. Did you make any report to any superior of yours in the government concerning anything you did at that place that day with respect to that phone in the wall? A. Yes.

Q. To whom? A. To the agent in charge of the New 333
York office of the F. B. I.

Q. Have you a copy of that report? A. Yes, sir.

Q. Will you produce it?

Mr. Walsh: I object to that on the same grounds as before, that it is not material or relevant at this particular time, and in the further reason it is confidential anyway, any record that he made.

The Court: Do you have that report with you?

The Witness: That is the white paper you just examined.

334 The Court: I sustain the objection. It is the paper I just examined.

Mr. Corbin: Oh, that is the one that was marked Exhibit 2, the white paper.

The Court: Is that the one that was marked Exhibit 2?

The Witness: Yes, sir.

Q. I did not understand it. That is the only report in writing that you made, is it? A. That is right.

Q. Did you hear anything over that phone that you could distinguish? I am referring now, you understand, 335 to the one in the hole in the wall? A. No.

Q. When did you commence listening over that phone? A. Shortly after we arrived at the building, I would say possibly fifteen minutes after the time of our arrival.

Q. That would be about 2:45 that you first tried it out at all? A. Yes sir.

Q. Meanwhile, what were you doing? A. Making the connections for both instruments.

Q. That is, attaching earphones? A. Attaching ear phones to the amplifier, attaching the microphone wire to one amplifier and fixing the wall microphone to the wall and attaching that to the amplifier.

336 Q. Turner told you where to put it on the wall? A. No.

Q. It was only in one place, wasn't it? A. No, I was—as I recall, I was told a general picture of the room as it was, and I tried different spots on the wall to determine where it would work best.

Q. That is, Turner told you where he thought the best spot was in view of what he had learned of the locations in the other room, is that right?

Mr. Walsh: I object to the form of that question, if your Honor please.

The Court: I will overrule the bojection.

A. I don't know whether Mr. Turner told me that or 337
whether he told me how the room was laid out or whether he told me specifically where to put it. I don't recall.

Q. Substantially he told you the layout, didn't he, of 1509? When I say the layout, I mean the location of the desk and the chairs? A. I believe so.

Q. And was Mr. Schulman's desk where he sat, near the wall between 1509 and 1508? A. Well, I wouldn't exactly know.

Q. Where was the desk located? A. So far as I know, I don't know where it was located. It is my recollection that I was told it was somewhere toward the end of the 338
room, near the window, that is, the end of the room away from the corridor of the building.

Q. And where, with reference to the Chambers Street side, that is, the window in 1508, did you put the microphone? A. About six to ten feet away from the wall in which the windows were located.

Q. And how long a room was that 1508? A. About 20 feet.

Q. That was about halfway down the wall, is that right? A. That is right.

Q. So that it was about opposite the middle of the room of 1509? A. Approximately, yes.

Q. Now is that about where Turner told you to put it? 339
A. I don't recall if he told me to put it there or not. I remember testing the wall—

Q. Was that about where he told you that the thing might be located to the best advantage? A. I don't recall.

Q. Whether he told you that or not, you don't recall? A. I remember—

Q. That is, you— A. I remember we had such a discussion and I remember after the discussion I tested the whole area of the wall.

Q. And you found that it was right? A. And found

340 that it operated most advantageously in the particular spot where I left it.

Q. Where he told you? A. I testified that I don't recall him telling me where to put it.

Q. Well, you had a discussion with him as to the lay-out in the other room; that is right, isn't it? A. So far as I can recall, yes.

Q. That is your best recollection, right? A. Yes.

Q. And he indicated somewhere on the wall of 1508 that he thought would be about the right spot in view of that layout, is that right? A. I don't recall that he did.

Q. You won't say that he did? A. I won't say that he
341 did or didn't.

Q. And thereupon you did some testing for yourself and came back to the spot where you put it on the wall with the adhesive, right? A. Yes, sir.

Q. Now, was that about the spot that he indicated or may have indicated previously?

Mr. Schachner: Your Honor, I object to this question. The witness has testified before that he does not recall any indication whatsoever as to a particular spot.

Mr. Corbin: That is right.

342 The Court: Well, this is cross examination. I will overrule the objection.

Q. Doesn't that refresh your recollection? A. No, sir—will you read the question?

Q. (Question read.) A. I testified that I don't recall that he did or did not indicate any specific locations.

Q. All right, but he told you, did he not,—and I think you told us this already—that he told you the layout in the other room for the purpose of your understanding the better where they should be put on the wall; that is right.

isn't it? A. Not entirely. I don't know the purpose. He 343
told me generally—

Q. Well, what did he tell you where the desk and the chairs were in the other room, if it wasn't to indicate to you a likely spot for the location of the microphone?

Mr. Walsh: Now I object to this as argumentative, and it calls for a conclusion. He has already testified on five occasions that Turner did not tell him, and he has already testified that by experimentation he placed the microphone in the most advantageous position, so far as this witness was concerned.

The Court: I will overrule the objection. This 344
is cross examination. He is allowed wide latitude.

Mr. Walsh: I understand that, if your Honor please, but it is repetitious.

The Court: I will overrule the objection.

The Witness: Will you read that, please?

Q. (Question read.)

Q. You heard what the Government's man said just now, did you.

Mr. Walsh: My name is Mr. Walsh.

Mr. Corbin: Thank you. I did not know it.

345

Q. You heard what Mr. Walsh said just now? A. Yes.

Q. Didn't you? A. Yes, sir.

Q. You haven't got to keep that in mind. Just tell us the fact. Is it or is it not true that when you went there that day Turner told you in substance that he had been in the other room and knew the layout of 1509? A. That is true.

Q. Of course; and didn't he tell you that such and such a place, maybe halfway down the wall, would be a likely location for your microphone in view of the layout in the other room? A. I don't recall whether he did or not.

346 Q. Well, all right. A. The chances are the most probable thing that he didn't.

Q. That is about as helpful as if I told you that the most likely thing is that he did, so we don't get anywhere. You don't recall one way or the other, and we will leave it that way, is that right? A. That is the situation.

Mr. Corbin: That is all.

Redirect examination by Mr. Schachner:

Q. You testified, did you not, both on direct and on cross examination that you took the microphone, went along with
347 it, along the wall, until you found some spot where the reception was good, is that right? A. Yes, sir.

Q. Tell me, in order to do that, to go along the wall and find a likely spot, did you need anybody telling you where a likely spot was? A. No. In fact it would be better if you weren't told. That is, your judgment wouldn't be affected by outside influences.

Q. Yes, but certainly you did not need anybody telling you where was a good place to put the thing? A. No, sir.

Mr. Corbin: I did not get the last.

(Answer read.)

348 The Witness: There was no necessity whatever.

Q. And if somebody had told you where a good place was, would you have taken his judgment? A. No, sir.

Mr. Corbin: What was that?

The Witness: No, sir.

Q. You would not have accepted the judgment and you would have conducted your own experiments as to where the best place was? A. That's right.

Q. Indeed, you remember definitely that you did con-

duct your own experiment where the best place was? A. Yes, sir. 349

Mr. Schachner: That is all.

Recross examination by Mr. Mintzer:

Q. May I ask you this, what is the maximum thickness of a wall through which you could hear with one of those instruments that you used? A. It depends upon the material of which the wall is made. It depends upon whether it is hollow. There are number of factors. There is no definite answer to the question.

Q. Suppose you have a solid wall. How thick can it be to hear? A. I couldn't say. 350

Q. Do you know whether this wall was solid or not? A. No, sir; I don't.

Q. Do you know how thick it was? A. No, sir.

Mr. Mintzer: That is all.

Recross examination by Mr. Corbin:

Q. At what hour was it that afternoon that you actually began listening and taking notes of any conversation in that room? A. I would say about—the listening began in the tests some time around three o'clock, I would say. 351

Q. Yes. That was the earliest? A. Yes, sir.

Q. You made no note of the substance of those conversations, did you? A. Not that I recall, no, sir.

Q. The purpose of those talks was to locate the individuals, was it? A. No. The purpose there was to set up the equipment and see that it was functioning properly.

Q. And when did the recording commence? A. After the arrival of the stenographer.

Q. And nothing before? A. No, sir.

Q. And no notes made of the substance or words of

352 any conversation before the stenographer came in? A. Not that I recall.

Q. Either by you or Turner, so far as you know? A. Well, I don't know about Turner. I don't think that I did.

Q. Was he making notes before the stenographer came? A. I say I don't know if he was or not.

Q. You were there, weren't you? A. Yes, sir.

Q. You mean you don't recall now? A. That is right.

Q. Would your notes that you made at the time reveal that fact? A. The notes that I made at the time cover only my own actions.

353 Mr. Corbin: All right.

The Court: I believe, gentlemen, we will impanel the jury at this time and let them go until tomorrow because we have, I think, some forty jurors here and we won't have use for the balance, so if that suits you, gentlemen we will impanel the jury and complete this hearing this afternoon or at least go along a while longer. We will take a few minutes recess.

(Recess, during which the jury was impaneled.)

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354 HAROLD P. TURNER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Turner, you are a special agent employed by the Federal Bureau of Investigation, are you not? A. I am.

Q. Mr. Turner, you remember listening on the listening devices installed in room 1508, the building at 277 Broadway? A. I do.

Q. Did you on the afternoon of April 7th listen to a conversation taking place in the next room over an apparatus that was connected with a microphone that was

situated in a hole in the wall? A. I listened over one 355
for a while that was in a hole in the wall.

Q. And was that on that afternoon of April 7th? A. It was.

Q. And could you distinguish what was said on the other side, or rather in the adjoining room over this microphone? A. Only an occasional word was distinguishable.

Q. Did you make any notes about anything that you listened to over this microphone? A. I did not.

Q. That is, as to the one in the hole? A. In the hole, that is what I am speaking of.

Q. You had been present the night before when that 356
microphone was installed, had you not? A. The one in the hole in the wall?

Q. Yes. A. I was.

Q. And at that time you also tried it out, did you not? A. I did.

Q. Was it working satisfactorily then? A. It was.

Q. Now did you ever at any time make out any continuous conversation that came over that microphone that was situated in the hole in the wall, except that one time late at night when you listened to find out whether it would work? A. That was the only time.

Q. That was the only time you could make out anything? 357
A. It was.

Q. And did you see agent Schroeder dismantle it? A. I did.

Q. And do you remember what time that was? A. I would say it was around about four o'clock in the afternoon of April 7th.

Q. You were present when another microphone was installed in the wall, were you not? A. I was.

Q. Did you indicate any specific spot where that microphone should be installed? A. I don't recall that I did.

Q. Do you recall whether or not you saw agent Schroeder

conduct an experiment to find out which spot would be most advantageous to place a microphone on? A. I did.

Q. Do you know from your knowledge of such listening devices whether the spot at which you can obtain the best reception depends solely upon the position of the person in the other room, or depends also upon other factors? A. It depends upon other factors.

Q. Now can you mention some of those other factors? A. Well, the construction of the wall, the thickness of the wall.

Q. If a wall were to contain beams or steel structure, would that influence the position of the microphone? A. It would.

Q. And generally the structure of the wall is one of the important factors that has to be taken into consideration in placing a microphone against it, is it not? A. That is right.

Q. All the conversations which you remember and which you could get in any coherent fashion were listened to over a listening device that was connected to a microphone that was merely placed against the wall and that was not in the hole in the wall, is that right? A. That is right.

Mr. Schachner: That is all.

Cross examination by Mr. Fielding:

Q. You were one of the agents who was in the private offices of Mr. Schulman the night before, were you not? A. Yes, sir.

Q. And you were one of the gentlemen who were let in by the superintendent of the building or the night engineer? A. On the night of April 6th.

Q. Without any authority of Mr. Schulman? A. No, I believe not.

Q. And you got a pretty good idea of Schulman's office layout, did you not? A. I had at that time, yes, sir.

Q. And you still had the next day? A. Yes, sir. 361

Q. Now, did you have any recording device in 1508? A. We had an amplifier in 1508.

Q. Or anything on which a written transcript of any kind or a record would be made? A. No recording device. We had a stenographer there.

Q. Well, so that there won't be any mistake, let me put it this way, that whatever you claim to have heard through the instrumentality of this crystal, so-called crystal microphone, was taken down stenographically? A. That is right.

Q. And that is the only record which was made at that time of such matters as you claim to have heard as emanating from 1509 and 1510 on the afternoon of April 362
7th? A. Yes, sir.

Q. 1937. A. Yes, sir.

Q. I think you said a few moments ago that agent Schroeder or Schoenfeld was the man who dismantled the microphone, where the installation was done in the baseboard between the hole in the wall of 1508 and 1509? A. Yes.

Q. Am I correct about that? A. Yes—Mr. Schroeder.

Q. In other words, when you went in there it had to be first connected up, did it not, the amplifier? A. The amplifier had to be connected to the microphone.

Q. And that was the condition that the agent who first 363
testified this morning left it in when he left that room? A. He left the wire from the microphone there.

Q. And then that was connected up? A. To the amplifier.

Q. Now when did you bring that second apparatus with you? A. On the afternoon of April 7th.

Q. The other and first microphone installation had been satisfactory the night before, had it not? A. It worked satisfactorily the night before.

Q. And did you attempt to use the first apparatus on

364 the 7th, in the afternoon, before you found out that it wouldn't work and then got the other set? A. No. We brought both of them along with the idea of installing both of them to see which was the most satisfactory.

Q. And naturally you had general conversation with the gentleman who just preceded you on the stand, another agent? A. At that time?

Q. Yes. A. Yes.

Q. And you did discuss with him the layout of Mr. Schulman's offices? A. I don't recall that I did.

Q. Well, would you say that you did not? A. We just talked generally, not anything specifically.

365 Q. That gentleman who installed the second microphone had never been in Schulman's office, had he? A. No.

Q. And you had? A. Yes, sir.

Q. Now, was the third man in the group at that time—had he been in Schulman's office before? A. Which one are you speaking of now?

Q. Well, I don't know. The three of you? A. On April 7th?

Q. Yes. A. Mr. Rubenstein?

Q. Yes. A. I don't believe he had, although I couldn't say.

366 Q. Well, do you recollect the identity of the gentlemen who were in room 1509 on the evening of the 6th, after ten o'clock? A. That was Mr. Ransom and myself.

Q. Just the two of you? A. Yes, sir.

Q. Was Mr. Ransom present the next day? A. No, sir.

Q. So that if any information were to be given to Mr. Schroeder, or the gentleman who just preceded you, as to the layout of Schulman's office, you were the only one on April 7th in the afternoon who could furnish that information? A. Yes, sir.

Q. How long were you there? A. When?

Q. On April 7th, in the afternoon? A. I would say

from about two-thirty until possibly six-thirty. 367

Q. And you testified the same as the preceding witness, that the stenographer had a head set with two earphones, you had one and the other gentleman had the other? A. That is right.

Q. And did you make any notes? A. I made a few.

Q. And the stenographer took down stenographically what he was hearing? A. Yes, sir.

Q. Now at the same time that that transpired, was the other set, the carbon microphone set, set up or had it been disconnected? A. It had been disconnected.

Q. You first attempted to use that as a means of obtaining information? A. Yes. We set them both up for the 368 same purpose.

Q. And one of them wouldn't work? A. One of them just didn't work.

Q. There were no discs made of any kind? A. No, sir.

Q. Nothing but the stenographic notes and the notes which you made, which you have just testified about? A. That is all.

Mr. Fielding: That is all.

Cross examination by Mr. Corbin:

Q. Did you make any notes of what you did that after- 369 noon? I am not referring to recording of any conversations that you heard over the telephone. A. Yes. I came back to the office and I dictated a memorandum.

Q. And that was a memorandum that contained a recital, as you then recalled it, of each thing you did that afternoon from the time you went into the room—

Mr. Walsh: If your Honor please, I am going to object to this question as immaterial and irrelevant.

The Court: I will overrule the objection to this

370 question. He is asking him if he recorded or made a memorandum. I will let him answer that question.

Q. Is that right? A. I dictated a memorandum, yes, sir.

Q. Well, my question was a little broader than that. Was it a memorandum which accounted and recorded what you did that afternoon? A. Yes, sir.

Q. I am referring to April 7th? A. April 7th.

Q. From two-thirty until you left, which was what time? A. Which was around about six-thirty.

371 Q. And did you make any other memorandum of what you did that afternoon besides the one you have just referred to? A. No.

Q. You made no pencilled notes at the time? A. Yes, I believe I did.

Q. And preserved them? A. Well, till I dictated my memorandum.

Q. What was that? A. I say, till I dictated my memorandum.

Q. And then what? A. I believe I still may have them.

Q. Are you looking on the table here for them? A. I was just wondering whether they were there or not.

372 Q. Do you think you gave them to counsel for the Government? A. I probably have—I know they were supposed to go in the file.

Q. They are in custody of counsel for the Government? A. Of the Bureau.

Mr. Walsh: I object to this whole line of inquiry so far as the notes.

The Court: Yes, I sustain the objection.

Mr. Corbin: I except.

Q. Did you record on any paper, either the pencilled notes that you have referred to made at the time, or

on the typewriter or report which you dictated, after you left the premises, anything about the dictaphone in the wall not working? A. Yes, sir, the one in the aperture in the wall. 373

Q. The one in the hole in the wall, yes. You put something in one or both of those memorandums about that instrument, did you? A. In one of them I recall distinctly.

Q. Is that the dictated one or the notes you made at the time? A. In the dictated one.

Q. You haven't made any revision of that dictated memorandum since? A. I have not.

Q. Where is that memorandum now? 374

Mr. Walsh: May I press the same objection as I have made before, if your Honor please?

The Court: I will overrule the objection. I will let him answer, if he knows where it is.

A. It is supposed to be in the files of the Bureau.

Q. With the other pencilled memorandum? A. With the reports in this case, yes.

Q. Including the pencilled memorandum that we have been talking about? A. They are part of the same file.

Mr. Corbin: Now there isn't any claim that those papers are not available, is there? 375

Mr. Schachner: No.

Mr. Corbin: All right. Then for the purpose of raising the question, I ask, if your Honor please, that he produce or be directed to produce this memorandum for my inspection.

The Court: Do you have those memoranda with you?

The Witness: I do not.

Mr. Walsh: I think that it is immaterial, and I object to the request. At this time it is irrelevant.

376 The Court: I do not know about the materiality. He says he does not have them. Do you know where they are?

The Witness: I expect they are over in the United States Attorney's office.

The Court: You may see, Mr. United States Attorney, if you have them.

Mr. Schachner: Are these the memoranda you refer to (handing)?

The Witness: Yes.

Mr. Schachner: He says this is the memorandum (handing to Court).

377 The Court: This is the memorandum that was dictated, that you had?

The Witness: Yes, sir.

(Discussion off the record between Mr. Schachner and the witness.)

Mr. Schachner: The witness does not seem to think that these additional notes, which seem to me to have some relevancy to what you, your Honor, are looking at, are the notes he was asked about. In order to be perfectly frank with the Court, I want to submit these notes also to the Court's attention,

378 irrespective of whether the witness thinks or does not think they were the notes he was asked about. It is only my desire to be perfectly candid with the Court.

The Court: Very well. I will take these two and ask him questions about them.

(Court examined papers.)

The Court: This one is a report dated April 9, 1937, which is the one he said was the one he dictated. I am going to let the clerk mark it for identification, and I will return it to the Government's attorney this afternoon, and permit that to be in-

spected and cross examined about. There are parts 379
of it that I do not think throw much light upon it, but in order to have that before an appellate court, in case it should reach an appellate court, and to have everything before it that would not prejudice either side, I am inclined to think I will let that go in, unless there is some serious objection on the part of the Government that I cannot see at this time. Of course there are one or two sentences in there that it might be necessary for me to exclude from view of the defense at this time because it tends more to the merit of the case than this hearing.

Now these other documents that have been handed 380
to me by the Government's attorney, another dated April 8th, is upon the merits of the case, and I do not think that it would be competent at this time, nor would it throw any light upon the question presently before the Court. I think it would be improper to permit the defense to have the benefit of the contents of these documents prior to the trial of the case, and I am going to take a recess at this time until ten-thirty tomorrow.

Mark that one.

(Marked Petitioner's Exhibit 5 for identification.) 381

The Court: As I say, I will hear you if there is any objection on it, but I cannot see that there is any prejudice on the trial of the merits. I will be here tomorrow morning before I rule on it.

Mr. Fielding: Your Honor, I have a memorandum on the question involved, and also a decision of Judge Byers on this very point, which was just handed down two weeks ago.

Mr. Walsh: May we have copies of that?

Mr. Fielding: It is just a copy of an opinion. It is on file here in the court.

382 Mr. Walsh: You also gave a memorandum. May we have a copy of yours?

Mr. Fielding: You did not give me one of yours.

Mr. Walsh: We didn't have any.

The Court: Very well, gentlemen. We will take a recess until ten-thirty tomorrow.

(Adjourned to July 16, 1940, at 10.30 a. m.)

UNITED STATES OF AMERICA

—against—

383 MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

New York, July 16, 1940, 10.30 a. m.

Hearing resumed.

The Court: Does counsel for the Government object to the inspection of each of those documents I was examining yesterday afternoon?

Mr. Schachner: Yes, your Honor. The Government objects to them, and if I may be heard—

384 The Court: Well, I have given thought to it. I don't care to hear from you. I will sustain the objection for the reason that the matter of the reference to the memoranda that was made by the witness was injected by the counsel for the defendant by questions asked him if he did make them, and the witness had not used the memorandum on the stand, and so far as the Court knows had not used them at all. It is my conception of the law that if the witness does not use any memorandum, makes no reference to them while on the stand, that opposing

counsel cannot make the memorandum competent by asking questions about them, so I will decline the request to permit counsel for the defendant to examine them, and I will allow you an exception, every one of them. 385

HAROLD P. TURNER, resumed the stand.

Cross examination continued by Mr. Corbin:

Mr. Corbin: This ruling, if Your Honor please, applied to the white paper which was described by the witness and identified as a memorandum that he dictated I think a day or two after the occurrence. 386

The Court: Yes, the one referred to as shown by the stenographer's notes.

Mr. Corbin: You will recall, Judge, that in addition to that paper there were some pencilled notes that were not marked for identification.

The Court: Yes.

Mr. Corbin: Which were handed up.

The Court: Yes. There were two pencilled notes, I believe, handed up to the Court at the Court's request for inspection, and the Court did inspect them and ruled in accordance with the ruling heretofore made this morning. 387

Mr. Corbin: Then may the record show that my attitude with respect to those is the same as with respect to the other paper marked for identification, in respect of which I have been denied?

The Court: Yes, the record may so show.

Mr. Corbin: And an exception accordingly.

The Court: Yes.

Mr. Corbin: Thank you.

Mr. Schachner: Your Honor, may I ask respect-

388 fully that the record be clarified at this point? Let the record show that the witness made no reference to these notes, that as far as the record before your Honor is concerned, the only reference made to these notes was the fact that I had to pick them out of some file and handed them to you. Now as far as the record is concerned, no relevancy whatsoever of those notes has been established.

The Court: The record may show as you stated, and that there was, after the production of the first document which was identified as an exhibit for identification, in the testimony of this witness, an off-the-
389 record discussion between counsel for the defendants and the government and the witness, during which time the assistant district attorney was showing to the witness the two pencilled memoranda which the witness made, which were not applicable or pertinent to the questions asked by the defendant. Thereupon the assistant district attorney stated that he wanted to be perfectly fair and frank and exhibited and handed to the Court these two pencilled memoranda which the assistant district attorney said might or might not be responsive to the question. The Court
390 examined the two documents, which were in pencil and ascertained that they pertained to the merits of the case, and at that particular time was not satisfied as to whether any of the documents should be required to be produced or not. The Court took a recess late in the afternoon until ten-thirty this morning, at which time the Court ruled that counsel for the defendants are not entitled to inspection of any of these reports to his superior officers.

By Mr. Corbin:

Q. Mr. Turner, you recall the two pencilled memoranda and the yellow paper which his Honor has just referred to

and which were shown to you by the assistant district attorney yesterday, don't you? A. Yes, sir. 391

Q. Mr. Turner, when did you make those memoranda?

Mr. Walsh: I object to that as irrelevant, if your Honor please, at this time.

The Court: Yes, I sustain the objection.

Mr. Corbin: Exception.

Q. Now, Mr. Turner, I suppose that this occurrence you have told us about on your direct examination, which happened in April of 1937, down at 277 Broadway, is only one of a great many similar investigations of the same general character that you made in the course of your official duties, is that right? A. You mean in connection with the installation of listening devices? 392

Q. Yes. A. Not so many, no, sir.

Q. Well, what do you mean by not so many? A. I mean the use of listening devices isn't frequent.

Q. You have done that on a number of occasions in the past three years or more, haven't you? A. What do you mean by "a number of occasions"? How many do you consider a number?

Q. Well, how many do you consider "not so many"? A. Well, I should say possibly, since then, three or four. 393

Q. And is it your job, or part of your duties, to handle that kind of an investigation, an investigation through instruments of the character described by you? A. When the necessity requires.

Q. I know, but it is the handling of such instruments that is a part of your work, is that right? A. Yes.

Q. And has been for years? A. Oh, for several.

Q. All right. Now in addition to your investigation in this particular case, about to be tried, we can agree, can't we, that you have had investigations since then of many other cases? A. Not many.

394 Q. In many other places? A. A few.

Q. Well, have you been in the service of the Government for the last three years? A. I have.

Q. As what? A. As an investigator.

Q. And you have only had a few cases in three years? A. No, I have had several—many cases—but not of this nature.

Q. You mean bankruptcy? A. That, and the use of listening devices.

Q. Getting away from the devices now, the fact is that you have been active during the past three years since this occurrence in April of 1937, in your work as an in-
395 vestigator? A. Yes, sir.

Q. And that covered many different situations in many different places, didn't it? A. Yes, sir.

Q. It is your general habit and duty to make some memoranda with regard to what you do in particular matters; right? A. Yes, sir.

Q. And it is your custom when a case comes up three years after an investigation to examine the file and the notes made at the time in order to refresh your recollection about what happened on that occasion? A. Yes, sir.

Q. Otherwise you couldn't recall, could you, and that
396 applies to this case, doesn't it? A. Yes, sir.

Q. And the memoranda that have been marked here for identification you looked over them in order to acquaint yourself with the details of what they contained, so that you could tell us what occurred on the occasion in question?

Mr. Walsh: I object to that as irrelevant at this time.

The Court: I will overrule the objection.

Q. That is true, isn't it? A. I did.

Q. On this particular job, namely, the one on trial here,

who was your superior? A. You mean the agent in charge 397
of this particular case?

Q. Well, that or the man who gave you instructions to do this work? A. Mulherin.

Q. And your first work on it occurred on the evening of April 6, 1937, is that right? A. Yes, sir.

Q. And was it on that day that you first got your instructions from your superior officer? A. I believe it was, yes, sir.

Q. What were those instructions?

Mr. Walsh: I object to that, if your Honor pleases.

The Court: Yes, I will sustain the objection. 398

Q. I ask you specifically, were you instructed by your superior to install a listening device or devices in the premises occupied by Mr. Schulman at 277 Broadway, in order to listen in on conversations in his office? A. I was instructed to assist in it.

Q. Well, you were there on both days, namely, the 6th and 7th of April, were you not? A. Yes, sir.

Q. Your instructions were to go there with someone else and do that job? A. Yes, sir.

Q. And what you did was done pursuant to those instructions from that superior? A. Yes, sir. 399

Q. And that applies to both days, is that right? A. Yes, sir.

Q. All right. Were you instructed as to what type of listening device to install? A. No, sir.

Q. That subject was left to your own discretion, wasn't it? A. Not mine.

Q. Well, to you and your associate? A. Yes, sir.

Q. And you and your associate determined upon the carbon disc inserted in the hole by the pipe as the one to be tried first, is that right? A. Well, the other one connected to the wall, the contact microphone was one that

400 could be installed when it was ready for use. I believe that we intended, possibly to use both of them.

Q. Oh, I see, so that your intention was to use—that is, to put in both and use either or both, as occasion dictated? A. Yes, sir.

Q. But it was one job to put both of them in, is that your point? A. Yes.

Q. In order to get the sound, is that right? A. That is, through more than one device. There were two, if necessary.

Q. Yes. Now after you had put the first one in on the 6th, did you go back to your superior for any instructions
401 as to whether or not you should take down the detectaphone on the 7th? A. The detectaphone set was the one used in the contact mike on the wall.

Q. That is right. Perhaps you did not understand my question. On the night of the 6th you put in the one that had the disc in the hole in the wall? A. Yes, the carbon.

Q. You call that the carbon? A. Microphone.

Q. The carbon microphone, all right. And when you left that, that night it was in working order ready to be hooked up and used the next day? A. It appeared to be
402 satisfactory.

Q. Yes. The next day, without any further instructions from your superior, you took, when you went to the premises, the detectaphone, is that right? A. As I recall, I believe we did, on our own initiative.

Q. Understanding and believing that that was a part of the single job that you had to do, to wire that room; right? A. Yes, sir.

Q. In short, you did not go back to your superior to say, "Now I put in one but I am going to take down the other also as a part of the job". You did that yourself, understanding that that was a part of the work and part

of your duties under your first initial instructions?. A. I 403
believe we decided on that, yes, sir.

Q. Well, that is a fair statement of it, isn't it? A. Yes, sir.

Q. All right. What was the name of that stenographer? A. Mr. Bodinger.

Q. Bodinger? A. Yes, sir.

Q. Is it true that there were two sets of headphones, earphones? A. For the detectaphone.

Q. And was it one of those two sets which was first hooked up to the carbon microphone? A. No, sir.

Q. What means did you have and use to listen on April 404
7th over the carbon microphone? A. We had head sets for that.

Q. Then how many head sets altogether did you take down to 1508? A. I don't recall definitely. There were either three or four; I wouldn't say for sure.

Q. All right. Were they all taken down on the 7th? A. Yes, sir.

Q. One of them didn't come down on the night of the 6th when you made the installation of the first listening device? A. There was a head set used on the night of the 6th to test the carbon microphone.

Q. That is what I understood. Did you take that back 405
with you? A. Yes, sir.

Q. You didn't leave that on the premises that night? A. No, sir.

Q. So that the following day you brought it or another one back, plus a couple of others, is that right? A. Two or three others.

Q. All right. Now on the 7th did you see or can you recall whether the stenographer used any head set on the carbon microphone? A. He did not.

Q. You are sure of that? A. Yes, sir.

Q. Who did the listening on that instrument? A. Well,

406 when it was first set up again on the 7th I used it for a while and maybe somebody else used it for a while, while testing it.

Q. You don't know? A. It could have been any one of the three or four that were there, that could have been listening in on.

Q. Including the stenographer? A. No, it wasn't necessary for him. It was just being set up for his use to be satisfactory.

Q. Well, who were the three or four others besides yourself there on the 7th? A. Well, there was agent Rubenstein, Mr. Schroeder and myself and it happened to be
407 three, besides Mr. Bodinger.

Q. What you mean is that either or both of the other two agents might have used that device? A. When it was first being installed?

Q. Yes. A. Set up.

Q. And that remained set up and ready for such use as could be made of it until after four o'clock that afternoon? A. Yes, sir, shortly after four.

Q. Where do you hail from? A. I am up here from Miami.

Q. Well, no, not this trip, but where do you come from?
408 A. From Nebraska.

Q. How long have you been in the Government service? A. Almost six years.

Q. You made an affidavit in this case, didn't you? A. Yes, sir.

Q. Do you recall the substance of it? I am not asking you for it; I am just wondering if you recall it generally? A. Generally, yes, sir.

Q. It had to do with the installation of these listening matters or devices in the premises in question? A. As I recall, it had something to do with it, yes.

Q. Do you happen to recall, without my showing it to

you, or showing you a copy, that you made no mention of this second wall device or detectaphone as you termed it here? A. I think that related only to the one installed in the hole in the wall, the carbon microphone. 409

Q. You understood that the motion was to suppress evidence, didn't you? A. I don't just recall what the correspondence was sent down by this office.

Q. You mean the affidavit that you made was mailed down to you? A. There was a letter forwarded down to my Miami office, requesting that an affidavit be signed by me, yes, sir.

Q. I was wondering, was the affidavit prepared up here or prepared by you in Miami? A. It was prepared here. 410

Q. And you signed it after it was prepared here? A. Yes, sir.

Q. And mailed it back? A. Yes, sir.

Q. You did not feel in signing that affidavit that you should say anything about the device that you now say, or at least that the Government now claims was the only one used on that occasion?

Mr. Walsh: I object to the form of that question and also on the further ground that it is immaterial. The affidavit itself is the best evidence. If he wants to test the credibility so far as the affidavit is concerned, I think he should do it in that form rather than go on in this immaterial way. 411

The Court: I will overrule the objection.

Mr. Corbin: Perhaps the question had better be read.

Q. (Question read.) A. Well, I was not preparing the case.

(Answer read.)

Q. Well, I know that. That doesn't answer it. Did

412 you feel that your statement was frank and complete without any reference at all to the only device that you now say was usable or used on that occasion?

Mr. Walsh: I object to the form of that question as calling for a conclusion.

The Court: I will overrule the objection. I think that is material, going to his credibility.

Mr. Walsh: Then I will withdraw my objection.

The Court: Of course the witness is on cross examination. I think it is certainly material. He has made an affidavit and did not mention the listen-
413 ing device that was used on the wall, but simply mentioned the other. Of course you have him on redirect examination if he has any explanation about it, but he is on cross examination now so I will overrule the objection.

A. The affidavit related only to the microphone installed in that aperture in the wall.

Q. So that in signing it you were only following instructions contained in the letter? A. The affidavit correctly related the facts in connection with one microphone.

Q. So far as it went, but you did not say anything in
414 the affidavit about that instrument having been dismantled and taken out and not used at all, did you? A. No, I don't recall. I don't think the affidavit said anything about that.

Q. No. Nor did you mention anything in any way about the other device which you say you did use on the 7th of April, did you? A. No, sir.

Q. Now did the letter that you got—have you got that letter? A. No, sir.

Mr. Corbin: Have you got a copy of it?

Mr. Juskow: We haven't got it.

Mr. Corbin: It must be in the file. Isn't it in the case file? 415

Mr. Juskow: No.

Q. Did the letter just say, "Sign this affidavit, swear to it and return it," or did it explain why it was limited to a device never used? A. I don't recall whether it did or not.

Q. Well, do you say now that what you did with respect to that affidavit was merely and only following the instructions contained in the letter? A. I believe it requested me to read the affidavit; if the facts set forth therein were correct, I should sign it and return it. Anything else in it I don't know that I can recall. 416

Q. Weren't you informed in that letter or otherwise that you were making an affidavit in answer to a motion to suppress evidence on the ground that evidence was illegally obtained? A. It may have, but I couldn't recall definitely.

Q. You understood at the time that you made the affidavit that that was the general purpose and the nature of the motion, didn't you? A. It is possible.

Mr. Walsh: I object to the form of that question, if your Honor please, regardless of what the affidavit was signed for. It calls for an operation and a conclusion by this witness for what purposes the affidavit was going to be submitted, which is, as a matter of law, to be prepared by the district attorney, and whatever the facts were related in the affidavit were in the judgment of the district attorney sufficient for the purposes of this motion, so I think that the question is improper and immaterial at this time. 417

The Court: I will overrule the objection. If he knows. Of course if he does not know, state that he does not know.

Mr. Corbin: I think he answered.

(Record read.)

418 Q. That is your best recollection? A. It was possible that is what it was to be used for. I didn't know definitely.

Q. When you sent the affidavit back, having signed it in the form prepared in New York, did you write a letter enclosing it? A. A letter of transmittal, yes, sir.

Q. Do you recall the contents of that letter? A. No, I don't.

Mr. Corbin: Is that letter around?

Mr. Juskow: It is in the files.

Mr. Corbin: But not presently available, is that right?

419 Mr. Juskow: Yes.

Mr. Corbin: All right.

Q. Did you, in terms or substance, say in that letter, "I have signed the affidavit and am mailing it back, but this device referred to in the affidavit was never used, and the affidavit contains nothing about the one that was used"? Did you say anything like that? A. I do not recall whether I did or not.

Q. So that there may be no question about it, I would like to ask you about the wall upon which this detectaphone was applied with the adhesive tape. That is the wall between 1508 and 1509, is that right? A. Separating the

420 two.

Q. Yes. Whether that was Schulman's wall or not, I don't inquire, but on the face of it, which was next to 1508 that you saw, as you were in 1508, was that face, that wall a solid one from top to bottom and from left to right as you stood looking at it? A. Yes, sir.

Q. I mean there was no door or window or other opening? A. Nothing except that hole in the baseboard.

Q. No vestige of any opening except the pipe in the baseboard? I don't mean that. I mean in the wall itself. It was a solid wall? A. Yes, sir, it was at that time.

Q. Now I took occasion, since you were here yesterday, 421
to have some measurements made. Perhaps we can agree generally on them without further bother. Have you any fair idea as to how deep that room 1508 is from the door where you entered to the window looking on to Chambers Street? A. No, I couldn't say.

Q. Was that one complete room from door to window or was there a partition? A. I believe there was a partition.

Q. Halfway down? A. I believe there was.

Q. Opposite a post and between two posts, rather, about halfway down from the door to the window. Do you recall that it extended some 7½ inches out into the room? A. I think there was a division in the room itself. 422

Q. Yes, so that the room 1508 was divided in the same way by a partition into two rooms; right? A. Yes, I believe so.

Q. And it was the front room with the window opening on to Chambers Street that you did your work in?

Mr. Walsh: I object to the characterization "doing the work in."

Mr. Corbin: Well, I will withdraw that.

The Court: I will overrule the objection; I will let him answer that. I think it is very clear about what he meant, "doing the work." 423

Mr. Walsh: Well, I did not want any other implication, if your Honor please.

A. There was a window in the part where we were working.

Q. Yes. Yesterday—it may have been you or someone else—you referred to the point where the microphone was put on the wall with adhesive tape as being about halfway down the wall. Was it you that gave that description of this location? A. I think not.

Q. Well, whether or not, I don't recall. But will you

424 please tell us how far from the window and along the wall, between 1508 and 1509 it was that that microphone was located; your best judgment? A. I couldn't say definitely. It was probably six feet, five feet to seven feet, somewhere around there.

Q. Our measurements indicate, for what you may accept them or reject them, that that wall is about twelve feet long from the post to the Chambers Street wall. You understand that is the wall on which you put the microphone, it is about 12 feet long. Now that would mean, if that were so, that you located the instrument about halfway down the wall from the post to the window. Is that your
425 best recollection?

Mr. Walsh: If your Honor please, I object to the form of that question. The testimony thus far is that he did not locate it, that Mr. Schroeder, the technical man, did it, but so far as where it was placed, we have no objection.

The Court: Very well. I will sustain the objection.

Q. You did not put it on the wall? You did not put the tape on the device, is that right? A. No, sir.

426 Q. Well, I don't care, but where was it? Was it about halfway down the wall? A. It was, as I recall, approximately.

Q. From post to window? A. Approximately, yes.

Q. All right. And about how high from the floor? A. Well, as I recall, it must have been about five foot or five and a half, somewhere around that. I just don't remember.

Mr. Corbin: Thank you very much.

By Mr. Mintzer:

Q. In this affidavit that you signed, do you recall men-

tioning whether or not you came back on April 7th? A. No, I don't recall. 427

Q. Well, I show you a copy of this affidavit (handing); tell the Court whether you stated it in that affidavit?

Mr. Schachner: May I see that? It is not the original.

Mr. Mintzer: I said it was a copy.

The Court: Do you wish to see it before he reads it?

Mr. Mintzer: Do you want to see it?

Mr. Schachner: Yes.

The Court: Yes, you may see it. 428

(Same handed to Government counsel.)

Mr. Mintzer: Are you satisfied that that is a copy, Mr. Schachner?

Mr. Schachner: Yes.

Q. Now you do not mention in that affidavit, do you, that you came back to Mr. Schulman's office on April 7th? A. I do not.

Q. You did not do any listening on April 6th, did you? A. Just enough to test the set.

Q. I mean there was nobody in Mr. Schulman's office on April 6th when you were there? A. I think not. 429

Q. So you actually started listening on April 7th to any conversations? A. Yes, sir.

Q. And yet you don't say a word in this affidavit about being there on April 7th, is that correct? A. That is right.

Q. Now do you say anything in this affidavit about taking out the first microphone? A. No, sir.

Q. Do you say anything in this affidavit—

Mr. Walsh: I object to the form of that question. The affidavit speaks for itself. Evidently if he cannot see it there it is not there.

430 The Court: I will overrule the objection. It will be competent upon cross examination to go into the credibility of the witness and also test his memory and so forth, so I will let him examine it.

Q. Your answer is no, is it not? A. No.

Q. Do you say anything in this affidavit that the first microphone that you installed on April 6th did not work? A. No, sir, I didn't.

(Paper marked Petitioner's Exhibit 6.)

Q. Mr. Turner, do you know what a turntable is? A.
431 No, I don't know.

Q. Do you know what you call the device that is used to record the voice as it comes over the amplifier, on a disc? A. That would hold a record?

Q. Yes. A. Yes.

Q. Do you know what that is called? A. That is possibly a turntable.

Q. Did you have a turntable in room 1508 either on April 6th or April 7th? A. No, sir.

Q. Now as I understood you to say yesterday, you left at about six-thirty on April 7th? A. It was around that time, yes, sir.

432 Q. Did you take off that microphone from the wall? A. Yes, sir.

Q. Did you remove all the instruments then? A. Yes, sir.

Q. Did you come back again to that room? A. After April 7th?

Q. Yes. A. Yes, sir.

Q. What date? A. On April 14th.

Q. Now, what instruments did you bring in on April 14th? A. The detectaphone.

Q. Which detectaphone: the one that you used on April 6th or the one that you used on April 7th? A. The one that I used on April 7th against the wall.

Q. You used it the same way as you did on April 7th? 433
A. Yes.

Q. Who was present with you on April 14th? A. I believe Mr. Rubenstein and Mr. Bodinger.

Q. What time did you get there on April 14th? A. I believe it was in the morning. I couldn't recall.

Q. And what time did you leave on April 14th? A. Possibly—I just cannot say.

Q. Well, have you any record from which you could refresh your recollection? A. Not with me, no, sir.

Q. You made a record of the time when you got there, when you left, did you not? A. I dictated a memorandum.

Q. And where is that memorandum? A. In the files of 434
the bureau.

Mr. Mintzer: May we have that memorandum?

Mr. Walsh: It is objected to, that that be produced at this time, if your Honor please.

The Court: Yes, I will sustain the objection.

Q. Well, did you leave before noon or after noon? A. I could not say without referring to that memorandum.

Q. Did the three of you leave together? A. I believe we did, yes, sir.

Q. Did you come back after April 14th? A. I did not, 435
no, sir.

Mr. Mintzer: That is all.

By Mr. Fielding:

Q. You are familiar with the use of this detectaphone on a number of occasions. You think, or is it your opinion that the instrument that you used was sensitive enough to pick up the voice of a person talking into a telephone in room 1509?

Mr. Walsh: I object to the form of that question, if your Honor pleases. It calls for an opinion.

436 The Court: I will overrule the objection. It calls for an opinion but if he can give his opinion I will let him answer the question.

Mr. Walsh: If he will rephrase the question I will have no objection.

Mr. Fielding: I would like that question to stand.

The Court: Yes. I will overrule the objection.

A. Well, now, which end of the conversation?

Q. The talker in room 1509? A. Yes, sir.

Mr. Fielding: That is all.

437 The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Mr. Turner, how many people were with you on April 7th when you were in room 1508? A. Mr. Bodinger, Mr. Schroeder, Mr. Rubenstein and myself.

Q. And how many head sets were there altogether for both microphones? A. There were three or four.

Q. Do you happen to know whether the head sets used for the carbon, to be connected with the carbon microphone, can be used for the microphone placed against the wall? A. I believe it can; yes, sir.

438 Q. Do you remember between what hours you tested that carbon microphone, the one that was stuck in the hole? When did you start testing it on April 7th and when did you stop? A. Let me see. I believe we arrived there about two-thirty, so it must have been from about a quarter to three or three to between four-thirty and five.

Q. Mr. Turner, I show you Petitioner's Exhibit 6, which is the affidavit or the copy of the affidavit which you signed and which you testified was sent to you for signature. I ask you whether a single word in that affidavit is untrue (handing)? A. No, sir.

Q. I ask you further whether it is your general custom 439
to rely upon the legal draftsmanship of the assistant United States attorneys charged with drawing legal documents, if you find that they express or if they are wholly truthful? A. Yes, sir.

Q. Did you change as much as a comma in this affidavit before signing it and returning it? A. No, sir.

Mr. Schachner: That is all.

Recross examination by Mr. Corbin:

Q. Then your attitude with respect to affidavits is that if they are just exactly accurate, just as far as they go, 440
that you don't touch one jot or tittle of them, is that right? A. If they correctly relate the facts.

Q. If they are drafted by the United States district attorney?

Mr. Walsh: No, that isn't what the witness said, if your Honor please. I ask that it be stricken out. The witness said if they are correct, they sign it.

The Court: And now he is asking him another question, "if they were drafted by the United States District Attorney." I will overrule the objection. That is another question, as I understand it.

Mr. Corbin: Yes. 441

Q. (Question read.) A. Yes, sir.

Q. So that you don't conceive it to be your duty to suggest that an affidavit that you are asked to sign may not state the whole truth on that subject. You sign it if it states the truth as far as it goes.

Mr. Walsh: I object to the form of that question, if your Honor pleases.

The Court: I will overrule the objection.

442 A. If it correctly relates to the facts, to the item to be covered in the affidavit.

Q. Well, the item to be covered in the affidavit here, as you understood it, was whether you had gotten evidence illegally in the premises 277 Broadway. You understood that, didn't you, in general? A. Yes.

Mr. Walsh: That calls for a conclusion and I object to that.

The Court: I will overrule the objection.

A. Yes.

443 Q. And when you signed that affidavit, you knew you were signing something that related to an instrument that you now say was never used in taking any evidence for use in this case, didn't you? A. This particular microphone was installed in the baseboard of the wall and that is what the affidavit related to.

Q. You felt when you signed that that it was a fair statement of the situation with respect to the installation of listening devices in the wall? A. I assumed the United States Attorney knew what he wanted to cover in the particular matter.

Q. So that it was his idea and not yours that nothing
444 be said about the other device, is that what you mean? A. He knew which phase he wanted to cover and that related to it.

Q. You assumed for some reason that he wanted to leave the rest of the story out and therefore you made no suggestion to the contrary.

Mr. Schechner: Your Honor, I object to this question. It is not testing the credibility of the witness in any way. The witness has a perfect right to rely upon the judgment of the district attorney as to the paper.

The Court: That is true, that is what he answered, but I will overrule the objection. On cross examination the courts have repeatedly held that a wide latitude is allowed, and this is a type of case where I think that latitude should not be curtailed. I am going to allow him wide cross examination. Of course a witness understands, and counsel for the Government understands, that if there is anything that is brought out that needs explanation, if an explanation be given, they have a right to make it, but I think the question is competent. I will overrule the objection. 445

The Witness: Will you read the question? 446

Q. (Question read.) A. I didn't assume anything.

Mr. Corbin: All right. May I inquire for the record, Judge, of counsel for the Government, when those letters could be made available?

Mr. Walsh: Well, we are going to object.

Mr. Corbin: I know that will raise the question after we see the letter, but can we know where they are? Could we get them in a few hours?

Mr. Walsh: No basis has been laid for the production of the letters in the first place, and I think we can save time because we are going to object to the production of any letters, and I think we can save a lot of time. 447

The Court: Very well. I will sustain the objection.

Mr. Corbin: Judge, we knew nothing about those letters until we inquired from the witness.

The Court: Well, I don't think those letters will be competent or that they can throw any light on it, or that they will be required, so I will sustain the objection.

448 Mr. Corbin: I respectfully except. May we concede all around, gentlemen, that this affidavit, marked Petitioner's Exhibit 6, and verified by the witness on May 3, 1940, was the only affidavit submitted in behalf of the Government in opposition to the motion for suppression?

Mr. Walsh: Mr. Clerk, do you have the original one there?

Mr. Corbin: Well, subject to correction, will you concede that that is the fact?

Mr. Schachner: Subject to correction.

449 Mr. Fielding: Maybe I can make a statement to clarify matters. I argued the motion before Judge Goddard and when I handed my papers up to the court, Mr. Schachner handed me his affidavit, which was the only affidavit offered in opposition to the motion.

The Court: Very well, gentlemen. The original affidavits, aren't they filed in the case, and won't the file itself show what was actually filed?

Mr. Schachner: Well, we will concede it for the time being.

The Court: Very well. Let it be conceded that
450 that is true, as suggested, subject to correction, and you may examine the files, and if there are any other affidavits in the file, the record will so show.

By Mr. Corbin:

Q. After April 14th, which you have referred to, were you ever back in that room or in those premises in connection with any investigation by way of listening devices or otherwise? A. I was not.

Q. Or anyone else in the Government service on the same mission, so far as you know? A. I couldn't say.

Q. So far as you know? A. I wasn't there.

Q. So far as you know? A. Yes. I knew that there was another— 451

Mr. Schachner: Your Honor, I object to this question because the witness has testified that he was not there. Any other statement that he might make would clearly be based on hearsay.

The Court: Yes, I will sustain the objection.

Mr. Corbin: Judge, in view of what the witness has said and the state of the record now, I renew my application for permission to examine the memoranda that the witness prepared and dictated—this applies to all of it—on the ground that it now appears that he used that memorandum in preparing to testify and that without its use he would have been unable to give us the information that he has given us on the stand. 452

Mr. Walsh: Is that necessary?

The Court: You may renew your motion and I will overrule it again.

Mr. Corbin: Thank you. Exception.

Q. Did you have a turntable there on the 14th? A. No, sir.

Mr. Corbin: That is all. 453

The Court: Anything further?

Mr. Schachner: No.

SIDNEY S. RUBENSTEIN, called and sworn as a witness on behalf of the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Rubenstein, you are a special agent of the Federal Bureau of Investigation, are you not? A. That is correct.

Q. You were present in the afternoon of April 7th in

454 the company of agents Turner and Schroeder and the stenographer Bodinger, in Room 1508 at 277 Broadway, were you not? A. I was.

Q. You listened over some listening device to conversations taking place in the adjoining room, which I take it was room 1509, did you not? A. I did.

Q. Did you listen over a listening device connected to a carbon microphone inserted in a hole in the wall alongside of the steam pipe? A. Yes, sir, I did.

Q. What did you hear when you listened over that device? A. Well, I heard considerable noise, similar to static on the radio, hissing and other outside noises. At times I
455 would hear some words, inaudible.

Q. Did you hear anything that was coherent enough to form an opinion or to be able to say what the conversation was in the next room over that device we are now talking about? A. I did not.

Q. You also listened to a device that was connected with a microphone placed against the wall, did you not? A. I did.

Q. And you received that coherent evidence by listening to that device, did you not? A. Yes, sir.

Mr. Schachner: That is all.

456

Cross examination by Mr. Fielding:

Q. Did you hear any telephone conversation? A. Yes, sir.

Q. How long were you there? A. I was there from about two-thirty p. m. until about 6:45 p. m.

Q. Were you back there on the 14th? A. Yes, sir.

Q. When were you there then? A. I got there about 9:45 a. m.

Q. How long did you stay there? A. We stayed there till—I would say until three or four o'clock.

Q. And you heard conversations then? A. Yes, sir.

Q. Did you hear any telephone conversation? A. Yes, 457
sir, I believe I did.

Q. Now did you, if you know, return the apparatus to room 1508 as a separate matter, after the time you had been there on the 7th? A. You mean we left it on the 7th?

Q. Did you leave it there on the 7th or have it taken away? A. We took everything away.

Q. And when you returned there on the 14th you brought the apparatus back with you? A. That is right.

Q. How did you get into the room? A. We got in with a key that we obtained from Mr. Raynor.

Q. And did you return the key after you left there on the 7th? A. I don't recall whether we did or not. 458

Q. Well, do you have any idea that you might have kept the key all that time? A. Might have kept it, yes, sir.

Q. And after the 14th did you return again? A. Yes, sir.

Q. When? A. On April 21, 1937.

Q. And who was with you at that time? A. Special agent M. R. Griffin, and Mr. N. Bodinger.

Q. N. what? A. Bodinger.

Q. The stenographer? A. Yes, sir.

Q. Now did you get in with a key? A. Yes, sir, we did.

Q. Did you have the key? A. Yes, sir.

Q. Did you get it from Raynor that day? A. I don't think I did, sir. I think I already had it. 459

Q. You kept it in your possession? A. Yes, sir.

Q. From the last time you were there on the 14th? A. Yes, sir.

Q. And who fixed up the listening device on that day? A. Special agent Griffin and myself.

Q. When did you get there? A. On the 21st.

Q. Yes. A. Some time in the afternoon. I don't know the exact time.

Q. Would you call it two or three o'clock? A. I would say so, about in that.

460 Q. And how long did you stay there? A. My recollection is about six-thirty, about in there.

Q. And took your apparatus away with you? A. Yes, sir.

Q. And did you hear conversations on that day? A. Yes, sir.

Q. Telephone conversation? A. Probably did.

Q. Now, did you have any turntable with you on the 21st? A. No, sir.

Q. So that notations that were made of anything that you heard were taken down by the stenographer? A. Yes, sir, and myself.

461 Q. And by the other agents who listened in? A. Myself only.

Q. Griffin didn't listen in? A. No, sir.

Mr. Schachner: Your Honor, I would like to object to that line of questioning on the ground that the defense is not properly entitled to know in just what shape or form evidence was obtained. It seems to me that at this point the defense is not entitled to know whether or not recordings were made of conversations listened to.

The Court: I will overrule the objection. He has
462 already answered those questions. Read what was the last question which referred to the objection.

(Record read.)

The Court: I will overrule the objection to what was on before. There was no further question asked now.

Q. Was that the last time you entered room 1508? A. No, sir, it was not.

Q. When did you go there again? A. April 26, 1937.

Q. Who was with you that time? A. Special agent Griffin and Mr. Bodinger.

Q. All these visits were made at the direction of your superiors, were they not? A. Yes, sir. 463

Q. Now on the 26th, when did you get there? A. In the afternoon some time.

Q. And how long did you stay? A. Oh, I would say it was some time after six, six-thirty, about in there.

Q. And again did you pick up a conversation in that room 1509? A. Yes, sir.

Q. Again a telephone conversation? A. Yes.

Q. You again removed the apparatus when you were there? A. Always.

Q. Now did you get the key from Raynor that time, if you recollect? A. I really can't remember; I either had it or got it from him. I don't remember which. 464

Q. Well, when did you finally turn the key in? A. That I don't remember. I might never have turned it in. I don't recall.

Q. Were you there after the 26th of April? A. No, sir; that was the last time.

Q. At any time did you ever have a key to room 1509? A. Never.

Q. And do you know if at any time in your presence any agent of the Government had such a key? A. Never saw an agent in my presence with a key, no, sir.

465

Mr. Fielding: That is all.

By Mr. Corbin:

Q. Where was the telephone located in room 1509? A. I couldn't tell you, sir. I never was in there.

Q. Well, you went on April 7th; you were with Turner, were you not? A. Yes, sir.

Q. And Turner told you where the telephone was, didn't he? A. No, sir.

Q. What is that? A. No, sir.

466 Q. Were you Turner's superior or not? A. No, sir; we were all alike.

Q. What is that?. A. We were all alike; the same seniority.

Q. Both working under the same instructions from Mr.— A. Mulherin, yes, sir.

Q. And I suppose you were here during Mr. Turner's examination as a witness here? A. Yes, sir.

Q. I mean present in this room? A. Yes, sir, that is right.

Q. And your answers would be similar if I asked you with respect to memoranda prepared by you at the time and
467 reports dictated? A. Yes, sir.

Mr. Corbin: May I make the same application with respect to this in order to cut the time short?

The Court: Yes, you may.

Mr. Walsh: And may I make the same objection?

The Court: The Court will sustain the objection and deny the request for inspection to be permitted; and I will allow you an exception. That applies to all of the defendants.

Mr. Corbin: I thought that would be a welcomed short cut.

468 The Court: Yes.

Mr. Corbin: It will protect everybody.

The Court: Yes. You have the point saved. I make the same ruling.

Mr. Corbin: Thank you. That is all.

The Court: Any further cross examination? Any redirect?

Mr. Schachner: No redirect.

Mr. Corbin: Judge, may I have just a moment?

The Court: Yes.

(Discussion among counsel for defendants.)

Mr. Corbin: I hate to ask it, but there is somebody

here that we have to talk to. If we could have a five- 469
minute recess it might short-cut our course.

The Court: Very well, we will take about a three or four-minute recess.

Mr. Corbin: Thank you very much.

(Short recess.)

The Court: Any further cross examination of this witness?

Mr. Corbin: Not of this witness. May I recall another witness for a question or two?

The Court: Very well.

Mr. Corbin: Is Mr. Ransom here?

470

JAMES RANSOM, recalled, testified further as follows:

Recross examination by Mr. Corbin:

Q. Mr. Ransom, referring to the night of April 6th, you were in room 1509, were you not? A. Yes, sir.

Q. And Mr. Turner was with you that night? A. In that room? I don't recall whether we were both in the room at the same time, but he was with me generally there, yes.

Q. You were in and out both 1508 and 1509 that evening? A. Yes, that is correct.

Q. Where was the telephone located in 1509? A. I do not recall. 471

Q. Well, did you make any memorandum about the telephone at the time? A. No, sir.

Q. Or the telephone wires? A. No, sir.

Q. You did not put anything down in writing on the subject of telephone wires at all? A. No, sir.

Q. Who went to the distribution rack covering the telephone connections for tenants on that floor?

Mr. Walsh: I object to the form of that question, if your Honor please. There is no testimony that anybody did go to the distribution rack.

472 The Court: Yes. I will sustain the objection. It assumes that somebody did it.

Q. Did you go? A. Not to my recollection.

Q. You know what I am talking about, don't you? A. I think I do, yes, sir.

Q. You say not to your recollection? A. That is correct.

Q. Did Turner go? A. Not to my knowledge.

Q. Will you say that you did not go on the evening of April 6, 1937? A. I won't say that I didn't; I won't say that I did. My purpose there was to install a microphone.

Q. You can't say that you didn't go to that spot? A. To
473 the best of my recollection I didn't.

Q. You inquired about it, didn't you? A. I don't recall making any such inquiry.

Q. Turner inquired about its locatoin? A. Not to my knowledge.

Mr. Corbin: That is all, Judge.

Mr. Corbin: I would like to recall Mr. Turner for a few questions.

HAROLD P. TURNER, recalled, testified further as follows:

474 Recross examination by Mr. Corbin:

Q. You know where the telephone was in room 1509, don't you? A. I don't recall exactly the location of the telephone, no, sir.

Q. Well, you knew that night? A. I beg your pardon?

Q. You knew the night of the 6th and the day of the 7th where it was? A. I may have seen it in the room, yes.

Q. And you knew where the telephone wires went in that room? A. No, sir.

Q. Or you did then? A. No, sir.

Q. What? A. No, sir.

Q. You did not follow any telephone wires around that room that night? A. No, sir. 475

Q. Did you go to that distribution rack covering this phone on that floor? A. I did not.

Q. What about the conversations that would come over the detectaphone? I am not asking you the substance of them or anything about what they were, but when you say that you heard telephone conversations, did you hear both ends of the conversation? That is what I want to know. A. No, sir.

Q. And when you were listening and testing the microphone, the carbon microphone in the hole in the wall, you could not hear, but even when it was operating O. K. you could not hear but one end of the conversation, could you? A. Even if it had been working O. K., you could have heard only one end of that conversation. 476

Q. That is right, but with this other instrument on the wall, you could hear both ends? A. No, sir.

Q. If it were placed right? A. No, sir.

Q. You mean to say that you never heard over a dictaphone both ends of a telephone conversation? A. I have not.

Q. Well, have you had much experience with the use of them? A. You mean using the contact microphone?

Q. Yes, near a telephone wire? A. No, sir. 477

Q. You never tried to pick up a conversation over a telephone wire with the use of a detectaphone? With the use of a contact microphone? A. No, sir.

Q. Well, what kind of a microphone was this? A. It was a contact microphone placed over against the wall.

Q. And if there was a telephone wire on the other side of the wall do you mean to say that you couldn't pick up both ends of the telephone conversation? A. I never have.

Q. Did you ever try? A. No, sir.

478 Q. Whether that could be done or not, you say you don't know? A. I don't know.

Q. Are you familiar with induction pickup of telephone wires? A. I have heard of it, yes, sir.

Q. Did you ever experiment with it? A. With other apparatus, yes, sir.

Q. What kind of a mike was this? What kind of a microphone was it that you put on the wall with adhesive tape? A. It was a crystal microphone with a sensitive needle to it.

Q. And with the use of that particular type you never experimented to find out if both ends of a telephone conversation could be picked up through a wall? A. No, sir.

479 Q. Where the telephone wire was on the other side of the wall? A. No, sir.

Mr. Corbin: All right, that is all.

NATHANIEL BODINGER, called and sworn as a witness for the Government, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Bodinger, you are a stenographer employed by the Federal Bureau of Investigation, are you not? A. I am.

480 Q. And you were present in room 1508 of 277 Broadway, on April 7, 1937, and on various occasions thereafter, were you not? A. I was.

Q. And did you listen to a listening device capable of picking up conversations that were taking place in the adjoining room, 1509? A. That is correct.

Q. Did you ever listen to any other listening device except one that was connected to a microphone that was placed against the wall separating the two rooms, that is, 1508 from 1509? A. I made an attempt to.

Q. You did make an attempt to? A. That is right.

Q. And was that attempt successful? A. No, it was not. 481

Q. Could you distinguish anything that you could take down in stenographic notes? A. No, there wasn't sufficient connected conversation that could be heard.

Q. You made certain stenographic notes of conversations, did you not? A. Yes, I did.

Q. Can you tell us whether all of these stenographic notes which you took were taken of a conversation to which you listened by the use of the listening device connected to the microphone placed against the wall? A. They were all taken through that microphone.

Mr. Schachner: That is all. 482

Cross examination by Mr. Fielding:

Q. You made notes as you may have heard voices, is that right? A. That is right.

Q. And those notes or transcripts of them are still available and in existence? A. They are.

Q. And among them did you record any telephone conversations that you heard? A. I did.

Q. And that occurred the night or the days of April 7th, 11th, 21st and 26th, is that correct, to the best of your recollection? A. Yes.

Q. And as the other witnesses have testified, as to your presence with them at that time, their testimony is substantially correct? A. That is so. 483

Q. And you were there. A. Yes.

Mr. Fielding: That is all.

Mr. Corbin: No cross.

Mr. Schachner: I would like to ask for the record of counsel whether or not there is any objection to having Mr. Schroeder return to Cleveland?

Mr. Corbin: Well, he was the technician, wasn't he?

484 Mr. Schachner: He was.

Mr. Corbin: There is no objection on my part but perhaps there may well be, and I think there will be some question about—some testimony, perhaps, about the operation of these instruments, and the power and ability of them which Mr. Schroeder might be needed for.

Mr. Walsh: We will have another expert on that.

Mr. Corbin: Well, let me ask Schroeder a couple of questions.

The Court: Very well. Let Mr. Schroeder come to the stand.

485

HAROLD O. SCHROEDER, recalled, testified further as follows:

Recross examination by Mr. Corbin:

Q. You know what induction pickup is on the telephone, don't you? A. Yes, sir.

Q. That can be done from telephone wires, can it not? A. Yes, sir.

Q. And it can record or produce for recording or any other use, conversations which occur on the telephone, that is, both ends of the conversation? A. Yes, sir.

Q. Now I am sorry, but I have got to ask you: were you
486 down on April 7th for the first time? A. April 7th was the only time I was there.

Q. That is right. On that occasion did you make any search for or look at what we call here the distribution rack covering the telephone service on that floor? A. I did not.

Q. And were you there when the location of the microphone disc or the detectaphone was located on the wall? A. Yes, sir.

Q. Do you know or don't you know whether it was in proximity to a telephone wire connecting with the telephone in 1509? A. I have no idea.

Mr. Corbin: I have no further questions.

Redirect examination by Mr. Walsh: 487

Q. Mr. Schroeder, is the apparatus that was used, the detectaphone, just placed against the wall? Is that the same type of an apparatus which you would use if you were going to get a telephone conversation, both ends of the telephone conversation through an induction coil? A. No, sir, it is not.

Q. It is an absolutely different device, is it not? A. That is right.

Mr. Walsh: That is all.

By Mr. Corbin: 488

Q. Well, it is a device, is it not, Mr. Schroeder, that if it be put near a telephone wire will, by that induction method, pick up both ends of the telephone conversation from the wire? A. Yes, sir.

Mr. Corbin: That is all.

By Mr. Schachner:

Q. Mr. Schroeder, when you just answered this question did you mean to say that this device which you used on this occasion was on that could pick up both ends of the telephone conversation? A. Oh, no, it could not.

Q. The device used in this particular instance about which you testified could not conceivably pick up both ends of a telephone conversation solely by being near a telephone wire, is that right? A. That is right. 489

Mr. Schachner: That is all. That concludes the evidence of the Government.

Mr. Corbin: We have no evidence.

The Court: You have no rebuttal evidence. Both sides rest?

Mr. Fielding: Defendants rest.

Mr. Schachner: Will counsel now state for the

490 record whether the testimony of Mr. Schroeder will be required now at the trial?

Mr. Corbin: It will not, so far as we are concerned.

The Court: Gentlemen, I do not see that an argument on the question, if there is any here, would help the Court so very much, if any. We are all more or less familiar with the principles involved. It comes down to a question of finding of facts. In weighing the testimony of witnesses the rule is well settled that it is the duty of the court or the trier of the facts, whatever the tribunal be, to reconcile the 491 testimony of all witnesses with the truth if it can be done.

Perjury is never imputed to any testimony if any other reasonable construction can be placed upon the testimony, and in weighing the testimony the interest of all witnesses or any witnesses in the outcome of the trial should be considered by the court as well as other rules governing the weight of testimony, so applying all of those rules I think the fair finding of fact here, and the only reasonable conclusion that can be reached from all of this testimony is that the agents first undertook to install 492 a device known as a carbon type, by which to put the wires through into the office 1509, and that on the test on the 6th that it worked, but that no testimony or no evidence was obtained on that day. That on the 7th they came back and that device did not work, and that they took no evidence, transcribed no evidence of any kind through that device; that it was abandoned and dismantled. That they then installed a device by attaching some instrument to the wall in room 1508 through which or by which certain conversations or parts of them at least were

heard. As a conclusion of law I will hold that if any testimony were obtained from that first device, by which the wires were extended into the office of 1509, that if there had been any evidence obtained through that method I would have sustained an objection to it and suppressed that evidence, because I think it was an invasion of the defendant's constitutional rights. I think that was a trespass when they went into the office of 1509 by the method by which they did and undertook to install that device. And if any testimony had been obtained through that device it would have been suppressed. 493

I find as a fact, however, that no testimony was obtained through that device, and from the testimony of the witnesses for the Government produced, all of them say that none was obtained. If it should develop at any time in the trial of the case that any testimony was obtained through that device, why, I would sustain an objection to it. 494

The other device that was installed was by lawful entry into room 1508. Insofar as these defendants were concerned it was lawful. The Government agents attached this listening device to the wall in 1508, and heard some conversations. I think those conversations, if they are relevant to the issues involved upon the trial of the case on its merits, are competent and should not be suppressed; that there is no connection between the two devices, and the fact that they unlawfully entered the office of the defendants on April 6th, aided them in no way whatever in attaching the device to the wall in 1508 on the 7th of April; that I find from the testimony that they could have just as easily and just as well, by the method that they did adopt, of trying out various places on the wall in room 1508, and determined 495

496 and located the space upon which this device should be attached there, as if they had never been in 1509. and that therefore the constitutional rights of the defendants were not violated by going into 1508 and there attaching listening instruments and taking down any conversations that they might have heard over that device solely, and that if the conversations that were heard are relevant to the issues to be heard on the merits of the case, then the testimony would be admissible and the objections of the defendants on the ground that their constitutional rights were invaded would be overruled.

497 I will therefore overrule the motion of the defendants to suppress the testimony insofar as the testimony was obtained over the listening device that was attached to the wall in 1508; that I will also overrule the motion of the defendants for the suppression of any testimony thus far shown, for the reason that the testimony shows, without conflict, that no testimony or evidence of any kind was obtained by the Government over the device or through the device that had been installed first, known as the carbon device, and by which they had unlawfully entered the office of the defendant at 1509.

498 Now in weighing the testimony, gentlemen, I will say briefly that I have not overlooked the testimony of the defendants' witnesses. I think their testimony is to be reconciled with all the testimony of the Government. There is not such a variance that it becomes necessary for the Court to say that the witnesses for the defense were untruthful. I think they related the facts just as nearly as they recalled them, but I think they were in error as to the size of the wires and as to everything that transpired about which they testified in detail, but they were

endeavoring to tell the truth and that their testi- 499
mony is to be reconciled with that of the Govern-
ment agents because the Government agents admit
practically what the witnesses for the defendants
testified to, except as to the size of the wires, and
probably a few other variances that I think are
more or less immaterial.

So I will find that the motion of the defendants
to suppress this testimony should be overruled.

Now is there any further request for any further
finding of fact? I will be glad, gentlemen, to make
any finding you desire. If there is any additional
finding to be made or if you desire to be heard, I 500
will hear you, but I might say that I am of course
more or less familiar with all the recent decisions of
the Supreme Court, including this one of wire tap-
ping and the obtaining of evidence by unlawful
searches and seizures.

Those are my conclusions of law and findings of
fact as I see it at this time. I do not think that an
argument would change me on it, and when I do
have my mind reasonably well made up, why I have
always found that counsel on both sides appreciate
an announcement from the court to that effect rather
than making an extended argument. I have made 501
an announcement, and if counsel think I am so
clearly erroneous about it, why I will hear them,
and of course if I am convinced that I am wrong I
will change my ruling, but that is the way the court
feels at this time.

Mr. Fielding: Well, not in any way to presume
that I feel that the Court hasn't decided the issue
exactly as it saw it, and for the record I would like
of course to except to your Honor's ruling, and if
there is a suggestion as to an additional finding of

502 fact, might I say that the testimony of the Government clearly shows that there was an interception of telephone messages which in my opinion are just as much a violation of the Federal Communications Act of 1932 and 1933 as it would be as if those wires were tapped.

The Court: Well, I do not so construe it, Mr. Fielding. I think that that is not the type of telephone wires within the meaning of the Communications Act.

Mr. Fielding: Well, I just want that for the record.

503 The Court: I will make that finding of fact against you and give you an exception. That applies to all the defendants.

Very well, gentlemen. We will take a recess until two-fifteen, and if you desire anything further to call to my attention, I will be glad to make a further finding of fact.

(After Recess. 2:15 p. m.)

The Court: Very well, gentlemen. Any further requests for any findings of fact of anything on the motion that I had this morning?

Mr. Corbin: No, your Honor.

504 The Court: Very well.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

505

C. 107-2.

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, THEODORE GOLDMAN, JACOB SCHULMAN and SAMUEL IRVING KANDELL.

Before: HON. SIDNEY C. MIZE, D. J., and a Jury

New York, July 15, 1940: 4:30 P. M.

APPEARANCES:

506

JOHN T. CAHILL, Esq., United States Attorney, for the Government: Bruno Schachner, Esq. and John C. Walsh, Esq., Assistant U. S. Attorneys, of Counsel.

PHILLIPS, MAHONEY & FIELDING, Esqrs., Attorneys for Defendant Jacob Schulman; Warren C. Fielding, Esq., of Counsel.

GEORGE MINTZER, Esq., Attorney for Defendant Irving Kandell.

HAROLD H. CORBIN, Esq., and EDWARD J. BENNETT, Esq., Attorneys for Morton and Theodore Goldman.

507

(A jury was impaneled and duly sworn.)

The Court: Ladies and gentlemen of this Jury: I am not going to take any testimony before you this afternoon. I am going to permit you to separate upon your promise that you won't talk about this case to anyone and not permit anyone to talk with you about it, nor discuss it in your hearing or presence. If anyone should undertake to talk to you about it you will report him back to the Court.

Will you promise to do that?

Jurors: Yes.

508 The Court: Very well. You may retire until 10:30 tomorrow morning.

(Adjourned to July 16, 1940, at 10:30 A. M.)

JOHN MCDONNELL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. McDonnell, you are a deputy county clerk of the County of New York. Is that your correct title? A. No, messenger.

Mr. Corbin: Will counsel put in the assignment,
509 and there won't be any question about it, if that is the purpose of it.

The Court: If that is the purpose of this witness, that will eliminate that much of it.

Mr. Schachner: That is one of the purposes of this witness.

Mr. Corbin: Well, maybe I had better not interrupt.

The Court: Very well. You may proceed.

Q. Have you brought with you the general assignment in the case of Paul Hymowitz? A. I have. Your adversary
510 has it there.

Q. Can you find it in this file (handing witness)? A. This is the general assignment, the original.

Mr. Schachner: Will you mark this, please.

(Deemed marked Government's Exhibit No. 1)

Q. This comes out of the official files of the County of New York? A. That is right.

Q. Now you have also brought with you a file in this case, have you not? A. I have.

Q. That is the entire file of the case? A. That is the entire file of the case.

Q. And every document in this file is part of the official record, is it not? A. It is. 511

Mr. Schachner: Your Honor, I offer the entire file in evidence.

Mr. Corbin: No objection.

(Deemed marked Government's Exhibit No. 2.)

Mr. Schachner: I would like to have the specific documents identified as they come up.

Q. Specifically I ask you to identify this paper marked on the back "Petition and order for provisional bond and sale" (handing witness). A. Yes, that is one of them. 512

Q. That is part of the file? A. That is right.

Q. The paper marked on the back "Notice of retainer" (handing witness). A. That is also part of the file.

Q. These papers clipped together here, the first paper being addressed to "Goldman, Malter & Goldman, Esqrs., April 26," the date, signed "Robert Hoffman" (handing witness). A. That is also part of the file.

Q. And all these papers here (indicating). A. Are all a part of that file.

Q. The mimeographed papers (indicating). A. They are also a part of it.

Q. The papers marked on the back "Order and Affidavit to pass assignee's account" (handing witness). A. That is also a part of the file. 513

Q. This paper marked in front "Sir: Please take notice that we appear in the proceedings as co-attorneys for the assignee, pursuant to the annexed retainer duly executed and acknowledged, dated May 5th," and signed by Goldman, Malter & Goldman and Robert Hoffman (handing witness). A. That is also part of the file.

Mr. Schachner: Thank you. That is all.

Mr. Corbin: You are offering the entire file, are you?

514 Mr. Schachner: Yes.

Mr. Corbin: With the permission of your Honor, would it be all right to leave them right here?

The Court: Yes. I think the exhibits should be left with the clerk. You can reach an agreement as to some other method, but what is the custom generally? My custom is to leave them with the clerk.

Mr. Corbin: Yes. The witness can do that, can he?

The Witness: If I can get a receipt from the clerk for both.

515 The Clerk: Yes, I will give it to you.

The Court: Are there any questions of this witness?

Mr. Corbin: No. It would be better if we could have the envelope marked as an exhibit. Is that what you asked for?

Mr. Schachner: I asked to have it marked but I understand, sir, that since it was—

Mr. Corbin: Well, to cut it short, if we have the envelope marked, all the papers in it would be considered part of the file.

The Court: Yes.

516 Mr. Corbin: To have it all as one exhibit.

The Court: Yes, or you can do this: The clerk can mark on a separate sheet of paper there and attach it with a clip to the file.

Mr. Corbin: Yes, that will be fine.

The Court: Mr. Clerk, you may do that then. Just attach it with a clip, whatever number it is.

The Clerk: Yes, sir.

The Court: Is that all of this witness?

Mr. Schachner: Yes.

The Court: You may go.

(Witness excused.)

Mr. Schachner: I would like at this point to 517
offer the bankruptcy file in evidence.

Does counsel for the defense insist that it be identified by the clerk?

Mr. Corbin: I do not insist on anything at all. You mean the file of Paul Hymowitz, bankrupt? Put it in as you did before, marking the envelope as one exhibit, and all that it contains included in it. That is agreeable to me.

Mr. Schachner: Mark this, please.

(Marked Government's Exhibit No. 3.)

Mr. Schachner: I want to call to the Court's at- 518
tention that this bankruptcy file contains among other papers, a petition marked "In the matter of Paul Hymowitz," praying, after certain formal demands, that Paul Hymowitz, the alleged bankrupt, be adjudicated as a bankrupt indeed.

I have here a stipulation entered into between the attorneys representing the defendants and the United States Attorney, which I would like to offer in evidence now if there is no objection.

Mr. Fielding: No objection.

The Court: It will be marked.

519

(Marked Government's Exhibit No. 4.)

Mr. Schachner: With your Honor's permission, I would like to read that stipulation to the jury.

The Court: Very well.

(Mr. Schachner read Exhibit 4 to the jury.)

Mr. Schachner: I further want to call to the jury's attention—and I can pass this exhibit on to you at this time—the fact that Mr. Schulman's signature, that is, the defendant Schulman's signature appears on that petition several times. He signs that petition as attorney for Abraham Schwartz

520 and Samuel Zuckerman, trading as Schwartz & Zuckerman, signed by Jacob P. Schulman, attorney in fact.

I believe his Honor will instruct you that "Attorney in fact" does not mean lawyer, but agent. It is also signed by Jacob P. Schulman as attorney in fact for Nathan Ribach and Samuel Mantis, trading as Ribach & Mantis.

"Jacob P. Schulman swears that he is duly authorized to execute this petition as attorney in fact for Schwartz & Zuckerman."

"Jacob P. Schulman being duly sworn, says that
521 he is the attorney in fact for Ribach & Mantis, one of the petitioning creditors named and described in the foregoing petition, does make solemn oath that the statements contained in the foregoing pages are true, that he is duly authorized to execute these papers as attorney in fact for Ribach & Mantis, signed Jacob P. Schulman. Subscribed and sworn to before one, Samuel Jarrett, notary public of New York County."

I am taking out of Government's Exhibit 3 a paper marked for "The Honorable Alfred C. Coxe, District Judge. In the matter of Paul Hymowitz, al-
522 leged bankrupt." It is evidently an order of the Court reading as follows:

"Upon reading and filing the annexed petition of Ribach & Mantis, by Jacob P. Schulman, is duly authorized attorney in fact, verified the 3rd day of April, 1937, and upon all the papers and proceedings heretofore had herein, it is, on motion of Jacob P. Schulman, attorney for the petitioning creditors, ordered that Samuel S. Kolman, assignee, and his attorney, Robert Hoffman, Esq., and Gabriel Wishbaw, the auctioneer, be and they hereby are jointly

and severally enjoined and restrained from proceed- 523
ing with the sale of the assets under the assignment proceeding for the benefit of creditors filed in the office of the Clerk of New York County," and so on and so forth.

There is annexed to this paper a petition "To the honorable judges of the United States District Court for the Southern District of New York," which ends in a prayer, "wherefore petitioner prays that the annexed order be signed"—that is the order which I just read—"for which no previous application has been made, dated New York, April 3, signed Ribach & Mantis by Jacob P. Schulman, attorney 524
in fact."

I would just like to refer to one more order: An order of the Honorable John W. Clancy, also found in Government's Exhibit 3, which orders:

"The involuntary petition to have Paul Hymowitz adjudicated a bankrupt and proceedings thereon be and the same hereby are dismissed."

Your Honor, may I suggest that the next witness of the Government will be a witness who most likely will have to testify a long time so if a recess is about due, this would make a very convenient time 525
to have it.

The Court: Very well. Ladies and gentlemen of the jury, under the instructions I have heretofore given you, which apply throughout the trial of this case, I am going to permit you to separate. You will be permitted to separate for the luncheon and at night upon your specific promise that you will not permit anyone to talk to you about this case nor discuss it in your presence or in your hearing.

Do each of you promise to do that?

Jurors: Yes.

526 The Court: Very well. You may be excused until tomorrow morning at 10:30.

(Adjourned to July 17, 1940, at 10:30 A. M.)

UNITED STATES OF AMERICA

vs.

MORTON GOLDMAN, et al.

New York, July 17, 1940;
10:30 A. M.

527 TRIAL RESUMED.

ROBERT HOFFMAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. What is your occupation, Mr. Hoffman? A. Lawyer.

Q. And what is your office address? A. 1270 Broadway, Manhattan.

Q. Do you remember a general assignment, for the benefit of creditors of Paul Hymowitz? A. I do.

Q. Will you please tell the Court and jury how you came to be connected with this case? A. Several days
528 before the assignment was executed I was consulted by some relatives of Paul Hymowitz, and particularly his mother, his sister and his brother. They came over to my home and they said that Paul Hymowitz had just been sentenced to Rikers Island for some trouble that he had with the City. They said that the mother had made an attempt to continue this business. It was what they call an Army & Navy store, drygoods, and they said that she was unable to continue with this business and they were interested in seeing that this business was liquidated and all the assets distributed among the creditors.

They also said that Hymowitz's mother was a creditor 529
to the extent of about $1200, that his sister was a creditor to the extent of about $700, and that in the course of the liquidation and payment of assets to the creditors they would be willing to waive their claims against the estate.

Q. Mr. Hoffman, do you know why you were retained? Did you have any prior relationship to Hymowitz or the Hymowitz family?

Mr. Mintzer: I object to that "why."

The Court: Objection sustained.

Q. Did you have any prior relations with those people, 530
Mr. Paul Hymowitz or his relatives? A. Well, Paul Hymowitz is a nephew of a brother-in-law of mine. I represented his uncle on several occasions. I also represented my brother-in-law, of course, and on several occasions prior to that I also represented his brother, Sam Hymowitz.

Q. Did you know why Mr. Hymowitz was sentenced to Rikers Island?

Mr. Mintzer: I object to that.

Mr. Schachner: I will withdraw the question.

Q. What did you do after you had been consulted by 531
the relatives? A. I think I got a pass to go to Rikers Island, and prepared an assignment for the benefit of creditors and had Mr. Hymowitz, Paul Hymowitz, execute the assignment.

Mr. Schachner: Let the record show that I withdrew a paper labeled "assignment" from Government's Exhibit 1.

Q. Is this the assignment which Mr. Hymowitz executed? A. It is.

Q. This assignment is made out to one, Kolman. Do you know Mr. Kolman? A. I do.

532 Q. Who is he? A. He is employed by me and associated with me in the practice of law.

Q. Who acted as Mr. Kolman's counsel? A. I did.

Q. Were you retained by him? A. I was.

Mr. Schachner: I withdraw from Government's Exhibit 1 the paper labeled "Notice of retainer."

Q. Will you tell us whether this is the retainer (handing witness). A. It is.

(Mr. Schachner read "Notice of retainer," part of Exhibit 1, to the jury.)

533 Mr. Corbin: Who is it acknowledged by? Your Honor, counsel is going to read the assignment in addition to what he has read as an acknowledgment before.

The Court: Proceed.

Q. After you were retained what did you do first, in connection with this assignment? A. I communicated with Mr. Wishbaw, who is an auctioneer.

Q. And what did you say to Wishbaw? A. Why, I asked him to go down and look over the stock that was in the store premises at the Bowery.

534 Q. And did he go down and do that? A. He did.

Q. And did he report back to you? A. I think I went down with him the first time.

Q. Did you make arrangements to have the stock of Mr. Hymowitz auctioned off? A. I did.

Q. How did you make those arrangements? A. Why, there was an order permitting the sale of the assets at public auction.

Mr. Schachner: I withdraw from Government's Exhibit 1 a paper labeled "Petition and order for provisional bond and sale."

I ask the witness whether this is the order which 535
he applied for and obtained.

The Witness: This is the order of sale.

(Mr. Schachner reads to the jury paper labeled "Petition and order for provisional bond and sale," part of Exhibit 1.)

Mr. Schachner: The petition states, among other things—(reading to jury).

Mr. Corbin: Is that all that you are going to read?

Mr. Schachner: At this time, Mr. Corbin.

Mr. Corbin: May I read the balance while the jury have the part of it that he read, your Honor? 536

The Court: Yes.

Mr. Corbin: Ladies and gentlemen, let me read to you what Mr. Schachner didn't. After reciting in the first paragraph that he is the assignee and that he resides in Brooklyn, and that the assignment dated March 22, which was two days before this paper was verified, had been executed, assigning all of the assets and property of Paul Hymowitz, 346 Bowery, and so forth, that it was filed on the 24th day of March, which was the same day that this was signed—

Mr. Schachner: Your Honor,—Mr. Corbin, will 537
you excuse me—may I object to this procedure. Mr. Corbin stated that he wants to read the balance. If he wants to read the balance please let him do so, but this is not the time to address an argument to the jury as to what part is relevant and what part is not relevant.

The Court: Well, as I understood it, he was calling attention to dates as shown on that paper—

Is that correct, Mr. Corbin?

Mr. Corbin: Yes.

538 The Court: If anything is shown on that paper that you desire to call attention to, as to a date or anything, without reading in detail, why, I will permit you to do that.

Mr. Corbin: Well, the thing that I wanted to read was the statement in the petition about the value of the assets.

The Court: Very well. You may do that. You may read any part that you desire.

Mr. Corbin: But I was only saying preliminarily that the first part of the affidavit covered these dates. That is all. I wasn't arguing.

539 The Court: Very well. You may proceed.

Mr. Corbin: I will argue differently from that, Judge, if we get that far.

(To the jury) After these paragraphs, and the paragraph that Mr. Schachner read, there is this: "That your petitioner has caused to be made an examination of the entire assets and has been informed and verily believes upon investigation of the same that the entire assets, consisting of Army and Navy goods, fixtures and so forth, are a value of about $1500, and annexed hereto and made a part thereof is a list of the assets now in the possession of your

540 petitioner as assignee."

Thank you.

By Mr. Schachner:

Q. Did you receive any telephone calls in connection with this assignment on or about the date you obtained this order, which is March 24, 1937? A. I did.

Q. Well, who called you? A. Someone who described himself as Morton Goldman of the firm of Goldman, Malter & Goldman.

Q. Did you recognize his voice? A. Not at that time.

Q. Did you have subsequent conversations with him? 541
A. I did.

Q. And by comparing the voice that spoke to you over the telephone to subsequent conversations, can you now tell us whether it was indeed the defendant Morton M. Goldman? A. I would say it was.

Q. And what did Mr. Morton Goldman tell you? A. He said that he understood an assignment for the benefit of creditors had been filed in the Hymowitz matter; that he represented creditors. He wanted to know what the picture was. I told him what the picture was.

Mr. Corbin: I object to that. 542

The Court: I will overrule the objection.

Mr. Corbin: I suggest that we ought to know what he told him. That is a characterization, "what the picture was." I haven't any objection to the conversation.

The Court: Yes, I sustain the objection. I thought he was repeating the conversation.

Mr. Corbin: No. He said, "I told him what the picture was." I want to know what he said.

The Court: Yes. I sustain the objection to that. That is a conclusion, as to what the picture was. I will permit him to state what the conversation was 543
he had with the defendant Goldman.

Q. Will you please state in brief detail what it was that you said to the defendant Goldman. A. He asked me what the assets were and what the liabilities were. I told him what they were and I referred—

Mr. Corbin: I object to that and move to strike it out.

The Court: I will overrule the objection.

Q. Well, can you tell us—

544 Mr. Schachner: I will comply with your request, Mr. Corbin. I will ask the witness.

Mr. Corbin: Let the witness state it.

Mr. Schachner: Well, I am going to ask the witness about that.

The Court: Very well, gentlemen. Proceed. I have overruled the objection.

Q. Will you tell us what you told Mr. Goldman and what he said to you? A. I told him that I had prepared and sent out a letter to all creditors, and I related to him the contents of that letter, and that letter included the
545 assets and liabilities as I thought they were at that time. I also told him that an order of sale had been obtained and that notices were going out to creditors. I also told him that if he were interested in this estate, why, I would be glad to work with him and I expected his cooperation. He then suggested that a meeting be called at the Dry Goods Association over at 175 Fifth Avenue. He said that the matter could be discussed there among the creditors and asked whether I would send out a notice to all creditors calling a meeting for the following afternoon at the office of the Dry Goods Association. I told him I would.

546 Mr. Schachner: Will you mark these, please.

(Marked Government's Exhibits 5, 5-A, 5-B and 5-C for identification.)

Q. Mr. Hoffman, I show you Government's Exhibit 5-A and ask you whether this is the notice which you prepared in compliance with the defendant Morton M. Goldman's demands (handing witness). A. It is.

Mr. Schachner: I would like to offer Government's Exhibit 5-A in evidence and to read it to the jury at this time.

Mr. Fielding: No objection. 547

Mr. Schachner: May I correct the record? I referred up to now to Exhibit 5-A. I now notice that it is Exhibit 5.

The Court: Very well.

(Government's Exhibit 5 for identification received in evidence.)

(Mr. Schachner read Exhibit 5 to the jury.)

Q. Mr. Hoffman, I ask you to look at Government's Exhibit 5-A and to tell the Court and jury whether this is the letter which you sent along (handing witness). A. This is 548 the letter.

Mr. Schachner: I would like to offer Government's Exhibit 5-A into evidence at this time.

Mr. Fielding: No objection.

(Government's Exhibit 5-A for identification received in evidence.)

Mr. Schachner: I would like to read it to the jury.

(Mr. Schachner read Exhibit 5-A to the jury.)

549

Q. Mr. Hoffman, I show you Government's Exhibit 5-C and ask you whether this is a notice which you prepared to be enclosed in this letter that contained all the other matters (handing witness). A. This was a notice sent out to the creditors advising them or informing them that there would be a public auction or a sale of the assets.

Mr. Schachner: If Mr. Corbin will permit me, if I just tell the jury—

Mr. Corbin: You don't need my permission. Go ahead.

Mr. Schachner: Well, I offer it in evidence, but

550 I do not think it is necessary to read it unless you require it (handing to Mr. Corbin).

Mr. Corbin: He said that went out with the March 24th letter?

Mr. Schachner: Yes.

Mr. Corbin: I don't care whether you read it.

(Government's Exhibit 5-C for identification received in evidence.)

Mr. Schachner: (To the jury.) This is a notice that an auction will take place on the 5th day of April, 1937, at 10:30 A. M. at No 346 Bowery.

551 Q. Did anybody else call you up that day in compliance with the defendant Morton Goldman's request that you send out an invitation to a meeting to be held the next day? A. You mean on the 24th of March?

Q. Yes. A. Someone called up and said he was Jacob Schulman, an attorney.

Q. Did you recognize his voice? A. At that time, no.

Q. Did you talk to him subsequently? A. I did.

Q. Can you tell us now whether or not that voice was the voice of Jacob P. Schulman? A. I would say it was.

Q. And what did he ask for? A. He asked for information
552 about the assignment, asking what the assets and liabilities were, and I gave him that information. I also told him that a meeting had been called at the office of the Dry Goods Association, at the request of Mr. Goldman, Morton Goldman. I told him that notices had been sent out calling that meeting. I also told him a letter had been sent out informing creditors of the general situation.

Mr. Corbin: May I move to strike it out, that entire answer. He said, "I gave him that information," and ask in that connection that he recount what he said to him.

The Court: As I understood the witness, that was the conversation. I understood him to say that he told him he sent out a letter giving the general information. 553

Is that a conversation you had with Mr. Schulman?

The Witness: Yes, sir, and gave him the substance of the letter.

The Court: Yes. I overrule the objection.

Mr. Corbin: He said he also did that. All right.

The Court: I sustain that part, as to "I told him the substance of the letter."

I will let you say what you told him, as you actually remember, the best recollection of what you actually told him, but the statement that he gave the substance of the letter, I will grant the motion to exclude that part of it. 554

The Witness: May I have the letter, Mr. Schachner, please?

Q. Is the information which you gave—

Mr. Corbin: No. He has asked for the letter. Let him see the letter.

The Court: Let him see the letter. 555

(Letter handed to the witness by Mr. Schachner.)

The Court: Very well. You may proceed now.

A. (After examination) I told Mr. Schulman—may I continue?

Q. You may. A. I told Mr. Schulman that there had been some—that the estimate of the cost value of the merchandise was approximately 22 to $2500, that there was on hand some emergency Relief Bureau vouchers of the value of approximately $250. I told him there might be some other

556 relief vouchers that could be collected and that there were liabilities of approximately $2500.

Q. The information which you gave to the defendant Morton Goldman, the information which you gave to the defendant Jacob P. Schulman, and this letter which you sent out to all the creditors, all recite that the cost value of the store, of the merchandise and stock in the store, was of the approximate value of 2200 to $2500, that is, the cost value, and that there were also on hand certain emergency Relief Bureau vouchers of a certain additional value stated. Will you tell the Court and jury how you arrived at these figures? A. I got that information from Mr. Hymowitz
557 when I saw him off at Rikers Island.

Q. Did you have anything to do with the drawing of the petition signed by Mr. Kolman? Did you have anything to do with the drawing of that petition and order for provisional bond and sale? A. I don't think I did.

Q. You did not draw that? A. No, sir.

Q. And you do not know how the value stated in this petition was arrived at? A. No, sir.

Q. On the day scheduled, on the day on which the meeting was scheduled to take place, that is, on March 25, 1937, did you hear any more about this matter, this assignment?
558 A. On what day?

Q. On March 25. A. I did.

Q. Well, what did you hear and from whom? A. I received a telephone call from someone who said he was Theodore Goldman.

Q. Did you recognize the voice of the defendant Theodore Goldman? A. Not at that time.

Q. Have you subsequently spoken to him? A. I have.

Q. Can you tell us now that the voice was actually that of the defendant Theodore Goldman? A. I should say it was.

Q. What did Mr. Theodore Goldman ask you? A. He

said he wanted to see me before the meeting took place and he would like to come up to my office. I told him—I, rather, asked him what was the necessity for it, and he said he wanted to speak to me. 559

Q. Did you permit him to come up? A. I said, "If you want to come up you can do so."

Q. Did he come up? A. He did.

Q. Around what time? A. Around noontime.

Q. Did he come alone? A. He was accompanied by somebody whom he introduced as Mr. Kandell.

Q. Did he tell you who Mr. Kandell was or did you know who Mr. Kandell was? A. I did have an idea who Mr. Kandell was, although I never met him before that day. 560

Q. Well, have you subsequently found out who Mr. Kandell was? A. He is supposed to be the—

Mr. Mintzer: I object to that.

The Court: I sustain the objection, "what he is supposed to be."

The Witness: He is connected with that Dry Goods Association at 175 Fifth Avenue.

Q. That is the Dry Goods & Furnishings Association, a collection agency, at which the meeting was scheduled to take place? 561

Mr. Mintzer: I object to that insertion "collection agency." He asked "Was it the Dry Goods Association that the meeting was held at."

The Court: Yes. I will sustain the objection as to the part which referred to a "collection agency," because it assumes something that has not thus far been shown.

Q. He is connected with the Dry Goods & Furnishings Association, is that your answer? A. Yes, sir.

562 Q. Do you know just what his connection with that Association is? A. I think he is the head of it.

Q. These two men came to your office? A. That is correct.

Q. What did they say to you when they came there? A. Well, Mr. Goldman said he thought it would be a good idea if he were retained as attorney and Mr. Kandell as co-assignee. I asked him what the necessity was. He said things would go so much smoother, they represented some of the creditors, and that if they were not associated with the co-attorney and co-assignee there might be difficulty. I told him if the creditors had any idea they were going
563 to file a petition in bankruptcy that would not be the best thing for the creditors.

Furthermore, I told him there was no need for a co-attorney or co-assignee, the matter was a small matter, there were no legal complications, and I saw no necessity for having a co-attorney and co-assignee.

On the hand, I told them if they wanted to cooperate I would appreciate it.

I also said that if they wanted to investigate or ask any questions, or look at any books or records they were welcome to do so.

564 I think it was Mr. Goldman who said that was the usual thing where some attorneys represented creditors in an estate they should be retained. I told him that was not my understanding.

As a matter of fact, I asked him whether he knew some man, some attorney by the name of Robert P. Levis, and he said he did. I told him I would call Mr. Levis up. He is an outstanding authority on bankruptcy and I would put a call in to Mr. Levis. When I got through talking with Mr. Levis, I told him there was no necessity for having a co-attorney or co-assignee in this estate.

As a matter of fact, both of them said I ought to think

it over and they would see me before the meeting took 565
place at the Dry Goods Association, and before leaving they left with me what are known as stipulations or retainers for the co-attorney and co-assignee.

Q. Did they explain to you the advantages of retaining them as co-attorneys and co-assignees? A. They said everything would go more smoothly and less likelihood of a petition in bankruptcy being filed.

Q. Did they tell you anything if you didn't retain them as co-attorney and co-assignee? A. They said there might be a petition in bankruptcy filed.

Q. Did they tell you they could bring that about? A. I don't think they did. 566

Q. Did they mention or not that they were influential with creditors at that meeting? A. They did.

Q. They did? A. They did.

Mr. Schachner: I ask that these be marked for identification.

(Marked Government's Exhibits 6 and 7 for identification.)

Q. You say that the defendant Theodore Goldman and the defendant Kandell told you they represented creditors? A. Yes, sir. 567

Q. Is that right? A. Yes, sir.

Q. Did the defendant Theodore Goldman tell you whom he represented, who was the creditor whom he represented? A. I think both of them said they represented Butler Brothers.

Q. I show you Government's Exhibit 6 marked for identification and ask you whether this was left with you by the defendants Theodore Goldman and Kandell? A. These papers were left with me.

568 Mr. Schachner: I offer Government's Exhibit 6 for identification in evidence. (Shows to counsel for the defendants.)

Q. I show you Government's Exhibit 7 for identification and ask you whether this was left with you by the defendants Theodore Goldman and Kandell? A. This was left with me at that time.

(Mr. Schachner shows Government's Exhibit 7 for identification to counsel.)

569 (Government's Exhibits 6 and 7 for identification received in evidence, without objection, and read to the jury.)

Q. Do you see Theodore Goldman in the courtroom here? A. I do.

Q. Can you point him out to the Court and jury? A. He is sitting right there (Pointing).

Mr. Schachner: Will the Clerk please ask the defendant Theodore Goldman to stand up.

(A person arose.)

570 Mr. Schachner: Let the record show that the witness identified the defendant Theodore Goldman.

Q. Do you see Mr. Kandell in the courtroom? A. There is the gentleman (pointing).

Mr. Corbin: We waive any questions about identification.

Mr. Schachner: Let the record show that the witness identified the defendant Kandell.

Q. Did the meeting at the Dry Goods & Furnishings Association scheduled for March 25, 1937, take place on that day? A. It did.

Q. Did you attend that meeting? A. I did. 571

Q. Who was present besides you? A. Mr. Wishbow, the auctioneer accompanying me, and there were a Mr. Goldstein of some other association, Mr. Kandell, Mr. Cohen, Mr. Philip Cohen, and there were three other men there. I think one was a representative of the firm of Ribach & Mantis, another representative of the firm of Schwartz & Zuckerman, and the other a representative of A. Kreiselman & Sons, and Morton Goldman was there.

Q. Will you please tell the Court and jury what was said at that meeting? A. I told the meeting that it had been called at the request of Morton Goldman, that I was there in compliance with that request, that I would be 572 glad to give them a picture of just what the condition was and that they could ask any questions that they desired.

I also told them that I had brought along with me Mr. Wishbow, who was the auctioneer, because he was more familiar with the inventory and the stock assets of the assignee, he having examined it a day or two before, so they could ask him any questions with regard to the stock down there. They asked him questions about the assets and liabilities, and I gave them that information.

Q. What did you tell them? A. I practically repeated the contents of the letter that had been sent to all creditors.

Q. What did the creditors say and what did the other 573 people present say? A. I think Mr. Goldstein suggested that there ought to be a sale of the assets in bulk, explaining that all the assets were to be sold to somebody who would be willing to buy it in the assignment proceeding. I think that is the way he said it, and then the other three creditors, that is Kreiselman and somebody from Kreiselman's and Ribach & Mantis and Schwartz & Zuckerman, almost in unison, stated they had each a buyer for it and they would be interested in buying the stock themselves.

Q. What did you say to that suggestion? A. I told them

574 I didn't feel this inventory or stock ought to be sold to a private bidder. I told them the way I thought they could get the best price for those assets was to have a public auction, properly advertised, so they could get interested buyers and have them bid against each other, and then they asked some questions of the auctioneer. I think before that Mr. Goldstein asked why I brought Mr. Wishbow, and I explained it to him, that he was more familiar with the assets, and could explain to them the type of merchandise and what they might be able to realize. I think it was at that point Mr. Wishbow and I were asked to leave the room, and we did.

575 Q. Before you tell us about that will you also tell us what the defendant Morton Goldman said on that occasion? A. With respect to what?

Q. Well, whatever you can remember was said by him, if he said anything? A. Well, he participated in the general conversations that ensued.

Q. Do you see the defendant Morton M. Goldman in the courtroom? A. Yes, sir, right behind you.

Mr. Schachner: Let the record show that the witness identified the defendant Morton M. Goldman.

576 Q. Who asked you to leave the room? A. I think it was Mr. Goldman, Morton M. Goldman.

Q. Were you asked to leave the room alone? A. No, Wishbow and I were asked to leave the room.

Q. Wishbow, that is the auctioneer? A. Yes, sir.

Q. Where did you go after you left the room? A. We went to an adjoining room.

Q. And what happened in that adjoining room? A. Well, we waited there for about five, ten or fifteen minutes.

Q. And what happened after you returned? A. Morton Goldman came into that room and asked Mr. Wishbow and me to accompany him out in the hall, to step out into the hall.

Q. And what did he say to you when you had stepped 577
out into the hall, which I take it you did? A. He said that he would like to make some money out of this deal, and he also thought that Wishbow and I wanted to make some money on this deal. He said he could arrange for a private sale, that the buyer would be obtained by either him or Mr. Kandell, that he with the help of Mr. Kandell would try to make an arrangement of 40 percent of the creditors' claim. He said that would take about a thousand dollars, and he said that he could arrange with Mr. Kandell to have this buyer pay a certain amount of money for the assets in the store; that only a part of the money that they would obtain from this buyer would be disclosed to 578
creditors; that the amount they would show to creditors would be the sum of $1000, or with a couple of hundred dollars, or a small sum of money above that, to take care of some expenses, and the balance, that would be kept a secret, would be split among Kandell, himself and me, the difference between the amount which would be reported to creditors and the amount they would actually obtain from a private buyer.

Mr. Corbin: What was the amount?

The Witness: No amount was stated at that time.

Mr. Schachner: Mr. Corbin, I will give you an 579
opportunity to examine the witness later.

Mr. Corbin: I didn't hear you.

Mr. Schachner: I would appreciate it if you would wait for your opportunity to examine the witness.

The Court: All right, gentlemen, proceed. Do not make requests to each other, make your application to the Court and I will rule on it. Continue.

The Witness: Do you want me to continue?

Q. You said there was going to be a certain sum received

580 from the buyer which was going to be kept secret from the creditors? A. That is correct.

Q. Was the amount mentioned? A. Not at that time.

Q. As the defendant Morton M. Goldman explained to you how the creditors could be made to consent to such an arrangement? A. Which creditors?

Q. All of the creditors that were entitled to share in the distribution?

Mr. Corbin: I object to that as suggestive and leading.

The Court: I sustain the objection.

581 Q. What else was said that you remember? A. I told Mr. Goldman at that time that I didn't like to make money that way. He said that if we didn't work it that way, why, in all likelihood we would have trouble with creditors and a petition in bankruptcy might be filed.

Q. Do you remember anything else that was said on that occasion? A. I think I said to him at that time, or rather I asked him what he was going to do with three creditors who were in the room at that time; they knew what the facts were, because they heard me explain what the facts were, that they knew what the inventory might
582 be worth, and I also told him a letter had gone out to all the creditors explaining to them what the assets were.

Well, he said, Kandell could handle the other creditors. He said he would send out some sort of a letter to them, and that with regard to the three creditors who were in the room he would throw them each a ten-dollar bill and they would shut their mouths.

Mr. Mintzer: May I ask your Honor to instruct the jury that any conversation or alleged conversation between Goldman and the witness, not in the presence of Kandell, is not binding on Kandell.

The Court: I will instruct them at this time that 583
it is not binding on any one but the defendant Goldman. Ultimately I will instruct them on my final charge, but at this time the conversations are admissible only against the defendants with whom had, or in whose presence the conversations were had.

Mr. Walsh: That would include Mr. Shulman.

Q. Do you know what the relationship is between Theodore Goldman and Morton M. Goldman? A. I understand they are brothers.

Q. Do you know in what firm they practiced law? A. 584
Under the name of Goldman, Maher & Goldman.

Q. And that is a partnership consisting among others of those two? A. I assume that to be the case.

Q. Did the defendant Morton Goldman explain on that occasion what would happen if his proposition was not accepted?

Mr. Corbin: I object to that as suggestive and leading.

The Court: Objection sustained.

Q. Do you remember anything else that was said at that 585
time? A. Not at this time. There may be some papers, Mr. Schachner, that might refresh my recollection. Presently I have no other recollection.

Mr. Schachner: Your Honor, may I repeat my previous question for the purpose of refreshing the witness's recollection?

The Court: That would be leading, Mr. Schachner. There is an objection made on that ground. Of course, this witness is a lawyer, and I see no necessity relaxing the rule against leading questions. He can

586 state his best recollection on any conversations that he had and, of course, if he overlooks anything, at a later time I might permit you to make a suggestion or call his attention or direct his attention to some particular conversation about which you think he might have some information, but I think leading questions ought not to be propounded to this witness.

Q. What did you tell Goldman in answer to whatever he had said to you? A. I told him I would think it over.

Q. Is that all you said to him? A. I think so.

Q. Did you return to the meeting? A. We did.

587 Q. And what happened after you returned to the meeting? A. Why, Goldman made a statement to the meeting that he thought he could get along with Wishbow and me.

Q. Did the meeting adjourn at that time? A. Well, there were some statements made by Kandell. Kandell asked that I give him a list of the creditors. He said all that was asked of you.

Some of the other creditors who were there said they would be interested in sending down some buyers, or they themselves would look the stock over. I told them that arrangements would be made for anybody who wished to go down and look the stock over, that they could do so.

588 Q. To your knowledge was that done subsequently? A. What?

Q. Were such arrangements made to your knowledge? A. Yes, sir.

Q. They were? A. Yes, sir.

Q. Did you ever hear about a petition in bankruptcy being filed against Paul Hymowitz? A. I did.

Q. Tell us when you first heard about that? A. Saturday morning, that is, the Saturday before the Monday of the sale.

Q. Who called that to your attention? A. Mr. Kolman.

Q. What did you do after you heard about that? A. 589
Why, I communicated with a Mr. Niehaus, who is the credit manager for Butler Bros.

Q. What did you say to him? A. I asked Mr.—

Mr. Mintzer: I object to the conversation.

The Court: Yes, I sustain the objection.

Q. What else did you do that day? A. I called up Mr. Wishbaw and asked him to come over to my office, and when he got there, with his help I dictated certain affidavits.

Q. For what purpose were those affidavits going to be 590
used? A. Making some application with respect to the petition which had been filed.

Q. What happened on the day of the sale? Before we go into that question, if I may withdraw that question, did you make any efforts to get in touch with any of the defendants on the Saturday preceding the day of sale? A. Mr. Wishbaw communicated with Morton Goldman.

Q. In your hearing? A. Well, he made the phone call out of my office while he was there.

Q. Could you hear what he said? A. I could hear what Mr. Wishbaw said.

Q. What did Mr. Wishbaw say—to whom did he make 591
that telephone call? A. Morton Goldman.

Q. What did he say to him? A. He told Mr. Goldman that he had better not or, rather, that Mr. Goldman should get in touch with Mr. Schulman and make every effort to hold Mr. Schulman from trying to stop that sale, and that "we were preparing affidavits in the office, to call all the facts to the attention of the Court, and that if that wasn't done, that is, to have Mr. Schulman refrain from making applications for a stay of that sale, the thing would be blown wide open."

Q. Did Mr. Wishbaw refer to the events outside the office

592 of the Dry Goods & Furnishings Association in that conversation?

Mr. Corbin: I object to it.

The Court: What was the question, Mr. Reporter?

Q. (Read.) A. He did.

The Court: I will overrule the objection insofar as the defendant Morton Goldman is concerned, but as to the other defendants it has no probative force at this time. As to the weight that might ultimately be given, why, of course I will instruct the jury at
593 the conclusion of the case.

Q. And what did he say about those events? A. He reminded Goldman that Goldman had made certain statements in the hall, that is, outside the Dry Goods Association, with regard to making a proposition to Wishbaw and myself.

Q. Well, what happened on Monday? That was the day or was to be the day of the sale, that is, Monday, April 5th, 1937. A. The sale had been advertised and Wishbaw, Kolman and some of Wishbaw's men, employees, and I had gone to the—we all went down to 346 Bowery. That is
594 the place where the merchandise was. There were about 20 or 30 people around there who I understood—they were interested: they were looking over the merchandise and before the sale could be started we were served, that is, Mr. Wishbaw and I were served with orders of the Federal Court staying the sale, that is, restraining us from going ahead with the sale.

Q. What happened after that? A. Why, Mr. Wishbaw and I went down to the Federal Court and I think before we went down to the Federal Court we went over to some office on lower Broadway and I prepared a notice of motion returnable the same afternoon before Judge Coxe, and the

application was to vacate the order which stayed the sale: 595

Q. What happened then? A. A copy of that order was served upon Mr. Schulman who appeared as the attorney for the petitioning creditors, and at 12 o'clock noon of that day, that is, Monday—do you want me to continue, Mr. Schachner?

Q. Please do. A. That noon we appeared in the chambers of Judge Coxe of this court, and there was an argument on that application.

Q. I show you Government's Exhibit 3 in evidence and I ask you whether that is the order dated April 3 staying the sale (handing witness). A. That looks like it.

596

Mr. Schachner: I should like to read to the jury the petition filed by the defendant Jacob P. Schulman obtaining that order.

(Mr. Schachner read petition to the jury.)

Q. You were telling the jury about the events on Monday morning, that is, April 5, 1937. Will you please continue telling us what happened that morning? A. I say, at noon, after the notice of motion was served on Mr. Schulman's office, we appeared in the chambers of Judge Coxe at 12 o'clock that day—that is, noon—and argument was had upon the application. There was a discussion there of all 597 the facts and of all the events that had taken place prior to that day.

Q. Well, what did the judge do? A. You mean finally?

Q. Well, tell us what he did before he did something finally and tell us what he did finally. A. Well, I explained to—rather, I stated to Judge Coxe all the facts in that case, and then Mr. Schulman made a statement that he was not interested in Mr. Morton Goldman, that he represented the petitioning creditors, and if there were any argument between Mr. Goldman and myself, he was not interested in it. Then Judge Coxe asked one of the creditors

598 itors—I think the same three persons who were at the meeting of the Dry Goods Association on March 25 also appeared at the chambers of Judge Coxe on that Monday, April 5th, and Judge Coxe addressed himself to one of the creditors, and this was after Mr. Schulman had argued the application, and Judge Coxe asked one of the creditors what he liked and the creditor said, "Well, I want administration in the Bankruptcy Court, and I would like a receiver and I would like this, that and the other thing," and then Judge Coxe addressed himself to one of the other creditors, and he says—he said—he asked the other creditor what he would have, and this other creditor said, "I
599 will have the same," and then Judge Coxe addressed the third creditor and he asked him, and he said, "I would like the same thing too," so —

Q. What was Judge Coxe's decision? A. He said he had to abide by the wishes of the creditors—well, rather, not abide, but he said, "I heard what the feelings of the creditors were in the matter," although I explained to Judge Coxe that the three of them I don't think totaled $250, less than 10 per cent of all of the claims.

Q. Tell us what the Court finally decided, please. A. Judge Coxe said that Schulman and I should try to get together and straighten this thing out.

600 Q. Well, this was an application to permit the sale, was it not? A. This was an application to vacate the stay and thus permit the sale to go on, and he denied the application to vacate the stay.

Q. Thank you. Did you thereupon leave Judge Coxe's chambers? A. We did.

Q. What happened as you left Judge Coxe's chambers? A. I was asked whether I wanted to do business with Schulman.

Q. Who asked you? A. I think Wishbaw.

Q. And what did you reply? A. I said, "Yes."

Q. Well, what happened thereupon? A. We went over 601
to Schulman's office.

Q. Who is "we"? A. Mr. Wishbaw, Mr. Kolman, I think Mr. Dunn was there. I don't know whether the three creditors who were there—I don't remember them accompanying Mr. Schulman or, rather, accompanying us to Mr. Schulman's office. As far as I recollect, there was Mr. Wishbaw, Mr. Kolman, Mr. Dunn, Mr. Schulman and myself, went over to Schulman's office and Schulman asked everybody to stay outside except me and he and I walked into his private office.

Q. After you walked into his private office—

602

Mr. Mintzer: Your Honor, likewise on all these conversations will you instruct the jury that they are not at the present time binding on Mr. Kandell?

The Court: Yes, I will instruct the jury that the conversations had outside the presence of Mr. Kandell are not binding upon him at this time, but they are binding upon those who are present and heard it.

Q. Well, tell us about the conversation that took place inside of Schulman's private office. A. Well, Mr. Schulman said that I was green and foolish for making those statements before Judge Coxe, and I said, "That is the way I felt about it." And he said, "It is foolish to argue about those things," and he asked whether he could do business with me along the lines as outlined by Mr. Goldman, that is, Morton Goldman, that is, to obtain a private buyer and then split the difference between the amount revealed the creditors and the amount actually obtained from the buyer; and he also said at that time that any amounts that would be split would be divided three ways: He would get a share, Goldman—Morton Goldman would get a share and I would get a share. That I would take care of Kolman

603

604 and Wishbaw; he would take care of his three creditors and Goldman would take care of Kandell.

Q. Was the petition in bankruptcy mentioned? A. Yes, sir.

Q. Well, what was said about that? A. Well, he said that—Schulman said that the petition in bankruptcy had been prepared in such a way that it could be easily dismissed. He said that no definite, specific act of bankruptcy had been stated in the petition. He also said at that time, I think, that it was so prepared that even if application were made by anybody to dismiss the petition, why, the petition could be amended and made to stick. On the
605 other hand, if we worked in on this deal, why, the petition could be dismissed.

Q. What did you tell Mr. Schulman, that is, the defendant Schulman? A. What did I say to him?

Q. Yes, what did you say to him at the end of the conversation? A. I told him that I was agreeable to that, and he asked whether he could communicate—whether—no, that he would get in touch with Mr. Kandell and with Morton Goldman and arrange for an appointment for the following day or the day after that.

Q. Did he get in touch with the defendant Kandell in your presence? A. I don't know; I don't remember

606 Q. What did you do on that day after you left Schulman? A. I went over to the office of Referee Kurtz?

Q. Who is Referee Kurtz? A. He is a referee in bankruptcy in this court. And when I spoke to him I told him what the situation was—

Mr. Corbin: Now one moment.

Mr. Fielding: I object to what he said to the referee.

The Court: I sustain the objection.

Q. After you spoke to Referee Kurtz, what did you do then? A. Why, he asked me whether I would tell my story to the Federal Bureau of Investigation. 607

Mr. Fielding: I move to strike out the answer.
The Court: Yes, I sustain the motion.
You may state what you did after that.
The Witness: Pardon?
The Court: But not the conversation.
The Witness: Oh!

Q. Where did you go after you left Referee Kurtz then? A. Well, I waited in his office until a representative of the Federal Bureau of Investigation came down. 608

Q. What did that representative from the Federal Bureau of Investigation tell you?

Mr. Fielding: I object to it on the ground that—
The Court: I sustain the objection.

Q. Did you have a conversation with a representative of the Federal Bureau of Investigation? A. When?

Q. On that day. A. I did.

Q. Did you have any other conversations with a representative or representatives of the Federal Bureau of Investigation? A. So many I can't recall how many. 609

Q. What did you do after you had a conversation with a representative of the Federal Bureau of Investigation on that afternoon when you had seen Referee Kurtz? A. I communicated with Schulman and arranged for an appointment for the following day or the day after that, for late in the afternoon.

Q. Well, do you remember the time at which that meeting took place? A. The time of the day?

Q. Yes. A. Late in the afternoon, about five; I imagine about five or six o'clock. My records would indicate that, Mr. Schachner.

610 Mr. Fielding: I move to strike that out as not responsive.

The Court: Yes, I sustain the motion. Strike out the last part of the record as indicated.

Q. You had that meeting with Schulman. What did he say to you at that meeting? A. You mean the one following the—

Q. The one regarding which you have just told us, where you made an appointment after you had seen a representative of the Federal Bureau of Investigation and that was scheduled to take place at about five or six, as you testified.

611 Can you tell us what the defendant Schulman told you at that occasion? A. Well, when I got there—well, we just had some conversation. He said that he had called—he expected Kandell and Morton Goldman over to his office. Then we spoke some more and then he said he had gotten a call that Mr. Goldman was on his way but that Mr. Kandell was engaged elsewhere and might not be able to get over there.

Q. Did Goldman come to that meeting? A. Who?

Q. Did Goldman, that is, the defendant Morton or Theodore Goldman? A. Morton.

612 Q. That is, did the defendant Morton Goldman come to that meeting? A. He did.

Q. Will you please relate to us as well as you remember what transpired at that meeting when the three of you, that is, the defendant Schulman, the defendant Goldman and you were there together? A. Well, substantially, when Goldman got there he upbraided me for making those statements to Judge Coxe or before Judge Coxe, told me I was all wet and he said that he never made any proposition to me. I, of course, told him that he did and I told him whatever I stated to Judge Coxe was the truth, and that argument kept on for a short while and Mr. Schulman

intervened and acted as a peacemaker. He said that we should stop arguing, and that I was green about the thing and didn't know any better. I mean there was a general discussion that followed. Morton Goldman stated that he came into the picture to represent the creditors, and that he was going to look out for the best interests of all creditors, and then there were some other discussions about assignments and sales and the like. I don't recollect just what they were. 613

Q. Did the defendant Morton M. Goldman stay until the end of the meeting? A. He did not. He said he was going to leave, and before he left Mr. Schulman asked him to wait outside. Mr. Schulman left the office, Goldman left the office, and some few minutes later Schulman came back. 614

Q. And what did the defendant Schulman tell you after he came back? A. He told me that he spoke to Mr. Goldman, Morton Goldman, and had told him what Mr. Schulman had discussed with me, the time that I was last at his office, and he told me that Morton Goldman was afraid to speak before me, but that he was amenable to going through and that he would carry out whatever was agreed upon or arranged.

Q. Well, did Schulman say anything else to you at that meeting? A. He asked whether it would be all right for him to call up a buyer. I said he could if he wanted to, and he called somebody on the telephone and addressed him as Mr. A. 615

Q. He did not state his full name, is that your testimony? A. Not at that time. I don't think so, and then Mr. Schulman asked whether he could—whether it could be arranged to see the merchandise or examine the stock down at the Bowery store, that is, the following day, for the following day.

Q. To your knowledge were such arrangements made? A. Arrangements were made for Schulman or Schulman and

616 his representatives or buyers to be down at the store the following day.

Q. Did Schulman report to you what the outcome of that inspection was? A. I think at that time he said he had an offer of 12 or $1500 from this buyer, and I told him it was an insufficient amount, that the auctioneer, that is, Wishbaw and his appraiser, Mr. Dunn, had told me that that stock was worth over $1800, and that they would have to jack up the price. Well, he said he thought he could get a definite offer of 1500 and if the point were pressed he might get another $100.

617 Q. When did he say all that to you? A. On the telephone between—oh, say, within a week following that 7th day of April, and I think he also told me some of that on the meeting that we had, I should say, within a week after the 7th of April at his office.

Q. And that was a second meeting that you had? A. I had another meeting with him about a week following the 7th of April.

Q. Where did that meeting take place? A. At his office.

Q. And what happened there? A. I think he stated that he had a definite offer of 1500 and he might be able to get 1600. I think there was something mentioned at that time about those relief vouchers, claims that Hymowitz had

618 against the City. There was some mention of that at that time. There was also a discussion of a preparation of a bill of sale and affidavits to be executed by Hymowitz with respect to creditors of the estate. There was also discussion as to waivers by Hymowitz's mother and sister with regard to their claims totaling $1900.

Q. Had you informed all the creditors that those claims were going to be waived? A. If that statement is not contained in the first letter which I sent out to all creditors, then the only time that statement was made to creditors was at the meeting at the Dry Goods Association on March 25.

Q. But you did inform the creditors that the claims which the relatives had were going to be waived? A. You mean I personally? 619

Q. Yes. Is that your testimony? Do I understand that? A. Well, I say if it is in that letter dated March 24th, I think, then I did inform all of the creditors. On the other hand, if it isn't contained in that statement, then I made a statement at the creditors' meeting on March 25th at the Dry Goods Association offices, at which time there were only about three creditors out of 31 present.

Q. And you again informed the defendant Schulman of that fact on this meeting? A. Of which fact, Mr. Schachner?

Q. Of the fact that the claims were going to be waived. 620
A. Oh yes. That is on the 14th.

Q. That meeting took place on or about the 14th? A. My records indicate about a week after the 7th.

Q. And what was said about the bill of sale at that time? A. I think he asked that I leave the amount of the consideration in the bill of sale blank.

Q. Did he tell you why it should be left blank? A. Well, he wanted to decide about how much there would be to split up. I think there was something said about it at that time, and that was one of the reasons advanced by him.

Q. Did he say on that occasion how much there was going to be split up? A. You mean at the second meeting? 621

Q. Yes. A. Well, there was some discussion. I don't recollect now whether it was three or four hundred dollars. That was to be the difference between the amount that would be undisclosed—rather, the purchase price undisclosed and the purchase price that would be disclosed to creditors, that is, in the bill of sale, but there was talk there of the voucher claims that Hymowitz had, and that together with the—I think there was a thousand dollars that Schulman said would cover the 40 per cent of the creditors' claims, and I think they amounted to about $2500, and in addition

622 I think he said that he would use the moneys that would be obtained from the City in payment of those relief vouchers, and that that sum, together with $1000 or just a little bit more than that, would be used to pay off creditors' claims to the extent of 40 per cent, and so that the creditors would see that there would only be about 50 or $75 for attorneys, and then the balance above that would be split amongst Goldman, Schulman and myself.

Q. Do I understand your testimony correctly that the money received from the City was going to be disclosed to creditors and paid to them? A. I think that was going to be used in the estate to pay out creditors, and also in con-
623 nection with some of the administration expenses.

Q. And the only money that was going to be split secretly was that additional sum that you were going to get from the buyer, is that right? A. That is correct.

Q. Did Mr. Schulman tell you the name of the purchaser to whom you should make out the bill of sale at that meeting? A. I don't think he did.

Q. Did he tell you the amount? A. He mentioned something around $1200.

Q. Did he subsequently tell you the amount? A. I think in the conversation over the telephone, after April 14th, that second meeting, he told me to state a consideration
624 of $1200.

Q. Did you meet with the defendant Schulman again? A. About a week later.

Q. Where did that meeting take place? A. At his office.

Q. And do you remember at what time that meeting took place? A. I think it was late in the afternoon.

Q. Well, now what transpired at that meeting? Who was present there at that meeting—may I withdraw my previous question. A. Mr. Schulman and I.

Q. What transpired there? A. He asked whether I had the bill of sale executed. I told him I had it executed.

that I had sent Kolman up to Rikers Island to have 625
Hymowitz sign it. I told him I also had the affidavits with respect to the creditors who were to share in any of the assets of the estate, and I think at that time I also told him that the mother and sister of Paul Hymowitz had definitely consented to waive their claims. Now I don't know whether at that time they had signed an affidavit waiving their claims but I know that there is some affidavit that was signed in which they waived their claims, and I told him that I had all these papers and asked him whether he had gotten the money from the buyer, and he said that he hadn't but that it was as good as gold or as good as a bank, or something like that, and I asked him how that 626
money was going to be handled, and he said, why, he would hold it and there was nothing to worry about. He did that quite frequently and everybody trusted him. And I told him that I wanted to make certain that Wishbaw was taken care of properly because he had had approximately 75 to $100 of expenses up until then, moneys actually disbursed and that Wishbaw was uneasy about this entire matter. And I think there was some discussion at that time with respect to Kandell and Goldman.

Q. Did Mr. Schulman tell you how much the defendant Kandell should receive? A. I think he said that he was 627
going to show a balance of $400, that is, a difference between the $1600 and the 12 shown in the bill of sale, that would be split three ways: one hundred and a quarter a piece, and Kolman would get $25 as the assignee or for the assignee's fees. I mean it was somewhere around those figures, Mr. Schachner.

Q. Did the defendant Schulman explain to you how much the defendant Kandell should receive? A. No. He said that Morton Goldman—the share that Morton Goldman would get would be used to take care of Kandell, that they usually work together, and Kandell was the one who ob-

628 tained all these claims, and that Goldman worked these things out and they usually split whatever they got and those things were almost daily occurrence.

Mr. Mintzer: Your Honor, may I at this time make the same request, that all this conversation took place not in the presence of Kandell and at the moment is not binding?

The Court: Yes. I so instruct the jury that at this time that evidence has no probative force against Kandell. It may or may not later on in the trial of the case. That is to be determined, but at this
629 time the statement with reference to Kandell, what he stated about Kandell has no probative force as against the defendant Kandell.

Q. Was anything said—

Mr. Corbin: Judge, I have not been interrupting. I have not been asking for any such instructions, but all these conversations that the witness has said he had with Schulman, the same will apply to my clients?

The Court: The same rule will apply. This is with reference to Kandell only at this time.

630 Mr. Corbin: Yes, because he has mentioned Goldman's name in the conversation.

Q. Was anything else said about the defendant Kandell at that time? A. I think Mr. Schulman mentioned the fact that he was glad that there had been some disturbance between Kandell and Butler Bros.; he was glad that there was some difficulty between them. That is all I can remember.

The Court: I think this is a good time to take a recess. We will adjourn until 2:15.

(Recess to 2:15 P. M.)

AFTERNOON SESSION. 631

ROBERT HOFFMAN, resumed the stand.

MR. SCHACHNER: Your Honor, I desire at this time to make a statement to clarify the record.

Referring to part A and B, which consist of two sheets of paper, in offering those papers in evidence I erroneously referred to them as Exhibit 5-C. Let the record be corrected to read "Exhibit 5-A and 5-B offered and received in evidence."

The Court: Very well.

Direct examination continued by Mr. Schachner: 632

Q. Before the recess, Mr. Hoffman, you were telling us about the conversation which you had with the defendant Schulman and you had just reached the point, I believe, in which you told us you said something about the defendant Kandell and Butler Brothers. Will you tell us what was said? A. Well, Schulman stated he was glad some disturbance had been created between Butler Brothers and Kandell's office.

Q. Is that all that was said on that occasion? A. No, sir.

Q. What else was said? A. We went into more detailed 633
figures of the moneys that were to be split among the three of us.

Q. Who were those three? A. Goldman's outfit, and he was to take care of Kandell. Schulman was to get a third, and he was to take care of those three creditors who were at the first meeting on March 25th, and who were also before Judge Coxe in his chambers, and I was to get a third to take care of Kolman, to some extent.

Q. You say Goldman was to get one share. Do you mean Morton or Theodore Goldman? A. I mean, in other words, his firm.

634 Q. That is both defendants together, Theodore Goldman and Morton Goldman were to get one share—

Mr. Corbin: I object. He said the firm, and the firm includes others.

The Court: Objection sustained. State what the conversation was. Of course, if Goldman stated that, he can state what the conversation was.

A. The conversation was that Goldman's outfit was to get one third.

Q. Is that all that was said on that occasion? A. Well, 635 there was some talk with regard to the moneys that were to be split, the moneys that were to be gotten from the city, for the relief vouchers, together with the $1200 which was a consideration expressed in the bill of sale, was to be used to pay the creditors 40 percent, and the balance was to be used for administration expenses, that is, the difference between the approximate figure of $1000 required to take care of approximately $2500 liabilities on a 40 percent basis, would make $1000, and the difference between that amount and $1200 consideration expressed in the bill of sale, plus the moneys to be gotten from the city, were to be used for administration expenses.

636 Now that amount called the difference, together with the $400, that was not to be disclosed to creditors, was to be split among the three of us, and that would also serve to take care of Mr. Wishbow's expenses and some of his fees, and some of the other incidental expenses like Schulman mentioned. He wanted an additional $35 for disbursements he had had for the filing of the petition in bankruptcy.

Q. Did you have the bill of sale which you were supposed to prepare with you at that time? A. When, on the 21st?

Q. Yes. A. I had with me the papers which Hymowitz had signed and Schulman had requested.

Q. Did you turn them over to Mr. Schulman? A. Not on the 21st. 637

Q. When did you see Mr. Schulman again? A. I think on the 26th.

Q. Do you remember what time of day it was? A. I think late that day.

Q. At what place did you meet? A. At his office.

Q. What transpired at that meeting? A. I told him that I had spoken to Mr. Wishbow and Mr. Wishbow was concerned about getting his fee out of it.

I also told him I discussed with Mr. Wishbow the matter of the undisclosed amount, the $400, and that Mr. Wishbow suggested that be held jointly by Schulman and myself. 638 Schulman told me Wishbow was crazy, and he said he would not do it.

Then a call was put in from Schulman's office to Wishbow, and there was a discussion between Wishbow and Schulman on the wire. Then when that talk was over Schulman told me, I don't remember whether I got on the telephone with Wishbow; I think I did—and I think Wishbow said he was satisfied, and that was after Schulman had told him that he, Schulman, could be trusted and he would see that everybody got what they were supposed to get.

So I think I turned the papers over to Schulman, and 639 there were certain other papers executed both by Schulman and myself.

Q. Was it decided to establish that joint account? A. No, sir.

Q. It was decided not to establish it, is that your testimony? A. I said not.

Q. Did you turn over certain papers to Mr. Schulman at that occasion? A. I did.

Q. Do you know what they were? A. I think he gave me a receipt for the bill of sale. There was some stipulation with respect to the proceeds from that sale to be

640 applied in the proposed settlement with creditors. There was also some statement or papers signed with respect to the moneys due from the City of New York for those relief vouchers and I think there was another letter of instructions to the firm of Goldman, Malter & Goldman.

Mr. Schachner: Will you mark this, please.

(Marked Government's Exhibit 8 for identification.)

Q. Mr. Hoffman, I show you Government's Exhibit 8 for identification, and ask you whether this is a copy of
641 the bill of sale which you turned over to the defendant Schulman (handing to witness)? A. I think this is a copy of the bill of sale that was turned over to Schulman at that time.

Mr. Schachner: I offer Government's Exhibit 8 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 8 for identification received in evidence.)

Mr. Schachner: This, ladies and gentlemen, is
642 a bill of sale which provides—(reading to jury).

Q. Did you prepare this bill of sale? A. Yes, sir.

Q. Did you insert the name L. Wein of 430 Grand Street, Manhattan? A. Well, the copy that you have there is in my handwriting, that is, the part that is inserted.

Q. Do you know Mr. Wein? A. I do not know.

Q. Who suggested that the name L. Wein be inserted—A. Mr. Schulman.

Q. —as the purchaser? A. Mr. Schulman.

Q. Did he tell you who Mr. Wein was? A. I don't recollect whether he told me just who he was.

643 Mr. Schachner: Will you mark this for identification.

(Marked Government's Exhibit 9 for identification.)

Q. I show you Government's Exhibit 9 for identification, and ask you whether you also turned over this paper at that occasion (handing to witness)? A. I think I turned over the original of this paper to Schulman.

Q. This Government's Exhibit 9 for identification is a copy of a paper which you turned over to Mr. Schulman, is that right? A. Yes, sir.

644 Mr. Schachner: I offer Government's Exhibit 9 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 9 for identification received in evidence.)

Mr. Schachner: This is a list of creditors of Paul Hymowitz.

Will you mark this for identification, and also this for identification.

(Marked Government's Exhibits 10 and 11 for identification.) 645

Q. I show you Government's Exhibit 10 for identification, and ask you whether this paper was executed by Jacob P. Schulman and by you on the 26th day of April, 1937 (handing to witness)? A. It was.

Q. Was that at the occasion of this conversation? A. Yes, sir.

Q. And Mr. Schulman executed it in your presence? A. Yes, sir.

Mr. Schachner: I offer Government's Exhibit 10 in evidence.

646 Mr. Fielding: No objection.

(Government's Exhibit 10 for identification received in evidence.)

(Mr. Schachner read Government's Exhibit 10 to the jury.)

Mr. Schachner: There is a postscript to that paper reading—(reading to jury).

Q. I show you Government's Exhibit 11 for identification, and ask you whether you executed it and turned it over to the defendant, Jacob P. Schulman at the same occasion,
647 that is, late in the day April 26, 1937 (handing to witness)? A. I signed it and I turned over a copy to Mr. Schulman and I think this is his—in fact, I am sure this is his—these are his initials, (indicating).

Q. It contains the initials of the defendant Jacob P. Schulman affixed in your presence, is that it? A. Yes, sir.

Mr. Schachner: I offer Government's Exhibit 11 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 11 for identification received in evidence.)

648 Mr. Schachner: Government's Exhibit 11 is this paper here, which is addressed to Jacob P. Schulman, Esq., 277 Broadway (reading to jury).

The paper bears Robert Hoffman's signature, and in ink here is a mark which reads "O.K." and undecipherable initials which the witness testifies were put on by the defendant Jacob P. Schulman.

Q. I would like to show you Government's Exhibit 2-C in evidence and tell me whether you executed that paper on April 26th on the same occasion when you turned it

over to Mr. Schulman? A. You mean this top sheet (indicating). 649

Q. Yes. A. I did. That is my signature.

Q. Was anything said on that occasion, that is, on April 26th? A. I think at that meeting Schulman told me how good he was in bankruptcy and insolvency matters. He told me if, in the future, I had any problems or any insolvency matters to consult with him and he would show me how to make money out of it.

Q. Did he say anything? A. I don't recall at this time.

Q. Did he explain to you what difference there was in his knowledge of the bankruptcy field and yours? 650

Mr. Fielding: I object to the question, your Honor; it is leading.

The Court: I sustain the objection.

Q. Did he tell you what he knew about the bankruptcy field? A. Yes, sir, he said he knew all the short-cuts, he could make money out of these insolvency matters, and he knows how to go around on those things to make money out of it.

Q. Did he say anything about the manner in which you had conducted yourself? 651

Mr. Fielding: I object to the question as leading.

The Court: Yes, that is somewhat leading, but I think I will overrule the objection to that question, and you may answer it.

Mr. Fielding: Exception.

A. He said you could not make any money honestly in bankruptcy, and he told me I was green at these things, that he would show me how.

Q. After that meeting with the defendant Schulman did you have a discussion with the defendant Theodore Goldman? A. I did.

652 Q. When did that take place? A. Some few days after this last meeting with Schulman.

Q. Where was that? A. Over the telephone.

Q. What did you discuss on that occasion? A. I think we discussed the matter of the affidavits or papers that were to be prepared in connection with the dismissal of the petition in bankruptcy.

Mr. Corbin: May I have the approximate date of that?

Q. Do you remember the approximate date of that dis-
653 cussion? A. I think it was a day or two before Goldman sent in some papers into my office in connection with this motion.

Mr. Corbin: Probably around the 5th or 6th of May?

The Witness: Might be around that, Mr. Corbin, about the 3rd or 4th, perhaps.

Mr. Corbin: The 3rd or 4th?

The Witness: About that.

Mr. Schachner: I ask that this be marked for identification.

654 (Marked Government's Exhibit 12 for identification.)

Q. I show you Government's Exhibit 12 for identification, and ask you whether that refreshes your recollection as to when you had that telephone conversation? A. I would say about, shortly before May 4th, at my office, the same day, and I got the letter on May 5th, perhaps.

Q. What was said at that telephone conversation? A. I think he said he was going to prepare the affidavit for that application, and he also discussed some of the disbursements that had already been incurred to date. In

otherwords, disbursements such as Wishbow had incurred, 655
and some disbursements that I had had. I mean generally that was the substance of the conversation; I don't remember particularly what it was.

Q. Did he tell you how a petition in bankruptcy would be dismissed? A. He did.

Mr. Corbin: By order of the Court.

Q. Did he explain to you how? A. No, he said that he had prepared the necessary papers which would consist of an affidavit and the notice of motion.

Q. Did he tell you on what grounds those papers would 656
be based? A. I don't recall whether he told me in that conversation as to the grounds. I think the affidavit stated specifically the grounds for the application.

Q. Was anything else said then? A. I don't recall at this time.

Q. Was anything said about whether or not Theodore Goldman should be retained as co-attorney to the assignee?

Mr. Fielding: I object to that on the ground that it is leading.

The Court: I will overrule the objection.

Mr. Fielding: Exception.

657

A. I know about that time there was some discussion with regard to the retainers that were to be signed by the assignee, that is, the one regarding the co-assignee and the one in connection with the co-attorney. No, I think it was only with the attorney, Mr. Schachner; I don't think there was any mention made about the co-assignee. I think there was some retainer that was sent in shortly about that time.

Q. I show you Government's Exhibit 12 for identification, and ask you whether you received that about that time? A. I did receive it.

658 Mr. Schachner: I offer Government's Exhibit 12 for identification in evidence.

(Government's Exhibit 12 for identification received in evidence without objection, and read to the jury.)

Mr. Schachner: Let it appear on the record that it has been stipulated that the signature appearing on Government's Exhibit 12 in evidence is the signature of Theodore Goldman.

Mr. Walsh: Any objection?

Mr. Corbin: No. He not only admits but he
659 declares it.

Q. I show you Government's Exhibit 2-D and ask you whether these are the papers that were sent to you and whether you executed them subsequently? A. You mean all of them?

Q. Yes, go through them (hands papers to the witness). A. The first paper a retainer, retaining Goldman, Malter & Goldman as co-attorneys.

Mr. Corbin: Signed by whom?

The Witness: Signed by Theodore Goldman on
660 behalf of that firm, and signed by me. You want me to describe them?

Mr. Schachner: No, that will be all right.

(Mr. Schachner reads Government's Exhibit 2-D to the jury.)

Mr. Schachner: Will you please mark this for identification.

(Marked Government's Exhibit 13 for identification.)

Q. I show you Government's Exhibit 13 for identification and ask you whether you received that (handing witness). A. Yes.

Mr. Schachner: I offer Government's Exhibit 13 661
in evidence. Let the record show that there is a stipulation admitting that Theodore Goldman, a defendant in this case, signed this letter.

(Government's Exhibit 13 for identification received in evidence.)

Mr. Schachner: The letter reads—(Reading to jury.)

The notice of appearance is Government's Exhibit 3, which reads—(reading to jury).

There is a further part of Exhibit 3 that I would like to read to you. It is an affidavit signed by 662
Robert Hoffman.

Q. Who prepared that affidavit, Mr. Hoffman? A. I understand that Theodore Goldman prepared it.

Q. What do you mean you understand? A. Well, he told me he was going to prepare it and he sent it.

Mr. Schachner: (To the jury) This reads as follows: (Reading to the jury.)

Will you mark this for identification.

(Marked Government's Exhibit 14 for identification.) 663

Q. I show you Government's Exhibit 14 for identification and ask you whether this letter was received by you (handing witness). A. This letter was received by me.

Mr. Schachner: Let the record show that there is a stipulation to the effect that the defendant Theodore Goldman signed this letter.

I offer Government's Exhibit 14 in evidence.

Mr. Fielding: No objection.

(Government's Exhibit 14 for identification received in evidence.)

664 Mr. Schachner: This letter is addressed to Robert Hoffman and is dated May 19, 1937, and it reads: (reading to the jury).

Will you please mark these for identification.

(Marked Government's Exhibits 14-A, 14-B and 14-C for identification)

Q. I show you Government's Exhibit 14-A for identification and ask you whether this is what you received from the defendant Theodore Goldman (handing witness). A. I received it from Goldman, Malter & Goldman.

Q. In a letter signed by Theodore Goldman? A. That
665 is right.

Q. I show you Government's Exhibit 14-B for identification and ask you whether that was received by you enclosed in the same letter (handing witness). A. It was.

Q. And I show you Government's Exhibit 14-C and ask you whether that was enclosed in the same letter (handing witness). A. It was.

Mr. Schachner: I offer Government's Exhibits 14-A, B and C in evidence.

Mr. Fielding: No objection.

(Government's Exhibits 14-A, 14-B and 14-C for
666 identification received in evidence.)

Mr. Schachner: (To the jury) Government's Exhibit 14-A is a letter addressed to Goldman, Malter & Goldman, and it was evidently to be signed by Paul Hymowitz. It states, in effect, that Paul Hymowitz agrees to turn over his business at 346 Bowery for $1500. It turns over a bill of sale executed to him, that is, to Hymowitz, by A. Rothlein in connection therewith, and authorizes Goldman, Malter & Goldman to obtain from A. Rothlein the sum of $1500 upon delivery of the bill of sale, and

the sum of $1500 Goldman, Malter & Goldman are authorized to deposit in their account for use of the money for following purposes— (Reading to the jury). 667

The second paper is a bill of sale stating: (Reading to the jury.)

Government's Exhibit 14-C is a paper providing in effect that if this assignment for this bill of sale should be insufficient to transfer Paul Hymowitz's interest in the $300 and whatever other money was due him from the City of New York, then by this paper he agrees to transfer whatever moneys are due him from the City to Goldman, Malter & Goldman. 668

Mr. Corbin: Just a catch-all.

Mr. Schachner: That is right.

By Mr. Schachner:

Q. Did Mr. Goldman or anyone else explain to you why this second bill of sale was sent to you? A. I don't remember any explanation being made on why this bill of sale was sent to me.

Q. Do you know now why it was sent to you?

Mr. Corbin: That is objected to.

The Court: Yes. I will sustain the objection unless it was some information that he got from one of the defendants. Of course if either one of the defendants said anything to him about it, it would be competent; otherwise I will sustain the objection as his conclusion. 669

Mr. Schachner: I will withdraw the question.

The Court: Very well.

Q. Did you follow through with the plan that you agreed upon? A. No, sir.

Mr. Schachner: That is all.

670 The Court: I believe before we begin the cross examination, we will take a three or four-minute recess.

(Short recess.)

Mr. Schachner: Before the cross examination begins I would like to add an exhibit to the record, your Honor.

The Court: Very well.

Mr. Schachner: I ask that this be marked for identification.

Mr. Corbin: Put it right in evidence.

671 (Marked Government's Exhibit No. 15.)

(Mr. Schachner read Exhibit 15 to the jury.)

Mr. Schachner: I would like to ask one more question of the witness, your Honor.

The Court: Yes.

By Mr. Schachner:

Q. Were you consulted before these papers were sent out? A. I was not.

Mr. Schachner: That is all.

672 Cross examination by Mr. Corbin:

Q. What difference does that make to you, whether you were consulted or not? A. I don't understand your question, Mr. Corbin.

Q. You heard it? A. I heard it.

Q. Let me get one subject cleaned up as quickly as I can, and I think I can do it in one question: Was there anything from the beginning to the end of the Hymowitz matter that Theodore Goldman did that was wrong, so far as you personally know; just yes or no to that.

Mr. Walsh: I object to the form of the question.

That is a question for the jury to decide from the evidence elicited throughout the whole trial. 673

The Court: I sustain the objection.

Mr. Corbin: I respectfully except.

Q. You know what it is to be a lawyer. You are a lawyer? A. I am a lawyer.

Q. And you know something about bankruptcy practice, don't you? A. Something.

Q. Just slightly, you mean by that? A. It is a question of degree.

Q. Just slightly? A. Just slightly.

Q. You don't want to— 674

Mr. Walsh: I object to the characterization "something." If he wants to test him let him do so.

The Court: Objection overruled.

Q. The way you said "something," did you want the jury to understand from that that you only had a slight acquaintance with bankruptcy practice? A. No. There is so much to it.

Q. And you had a lot to do with it? A. No.

Q. How long have you been practicing? A. About 12 years. 675

Q. During the year 1937 how many bankruptcy matters did you handle? A. I cannot recall. Very few, if any, during 1937.

Q. Does that apply to 1938? A. When you say "bankruptcy," do you mean assignment proceedings also?

Q. All insolvency proceedings. You had a lot to do with those things? A. What do you mean by "a lot"?

Q. Well, a large percentage of your practice has been in that field, has it not? A. It has not.

Q. What percentage has it been in connection with such matters? A. Do you mean the number of cases?

676 Q. In percentage. A. You mean the number of cases in insolvency as compared with the other type of cases?

Q. Insolvencies, including bankruptcies. A. As compared with other type of cases?

Q. Yes. A. Maybe a fraction of a per cent.

Q. Well, what would you say? 7/8 or 1/8 or one per cent, or what? A. I couldn't tell you.

Q. What fraction did you have in mind? A. I could not even figure that out.

Q. You still insist that your percentage in that kind of matter may be stated in terms of a fraction of one per cent? A. I would say that.

677 Q. You want to stick to that? A. I would like to.

Q. On thoughtful reflection, you say it was not more than a fraction of one percent? A. That is correct.

Q. Where do you practice? A. New York City. You mean where is my office? In the City of New York.

Q. Give us the address. A. 1270 Broadway.

Q. What street is that? A. 33rd Street.

Q. How long have you been there? A. Oh, about 10 years.

Q. You had to do with Paul Hymowitz by some distant relationship, is that right? A. Well, I wouldn't call it a

678 relationship.

Q. All right. I don't mean to misstate it at all or exaggerate it. There was distant relationship; you gave it to us? A. Yes, sir. He is a nephew of a brother-in-law of mine.

Q. You have some such relationship with him, a distant relationship. A. Is that a relationship, Mr. Corbin?

Q. Are you trying this case? A. I am asking you. I am telling you.

Q. You want to ask me? A. (No answer.)

Q. Are you still a stool pigeon for the Government?

Mr. Walsh: I object to the characterization, your

Honor. I also ask that Mr. Corbin be more careful with his language. 679

The Court: Objection sustained.

Q. You have been with the Government agents for a long while preparing this case, getting ready to testify in it yourself? A. Since April 5 of 1937.

Q. And you knew one of the Goldman firm pretty well? A. You mean Mr. Malter?

Q. Yes. A. Yes, sir, I know him for ten years or so, or ten years prior to 1937.

Q. Did you tell him you were spying on his partners? 680

Mr. Walsh: I object to the characterization.

The Court: Same ruling.

Q. Did you tell you had been to the FBI and was working with them on a matter trying to implicate or involve his partners, or either of them?

Mr. Walsh: I object to the form of the question, your Honor.

The Court: Same ruling.

Mr. Walsh: If the man wants to—

The Court: When I sustain an objection or overrule an objection I don't care to hear any further argument than from the one who is making the objection, and if the one against whom I rule thinks I am in error and has a reasonable basis for it, I will hear from him, but after I have ruled in favor of a person I don't care to hear from him further. So I will sustain the objection to that question. 681

Q. So Paul and you were known to each other for a long while prior to March of 1937? A. Quite a while.

Q. Well, about how long? A. I should say about 1921 or 2.

682 Q. And you had done some business for others members of the family? A. Yes, sir.

Q. And he got in trouble and got over on Rikers Island, right? A. That is what I was told and that is what I understand when I saw him there.

Q. Your answer is yes? A. Yes is the answer.

Q. All right. And you went over there armed with a paper, did you? A. I went over there with a paper.

Q. What was the paper? A. A form of assignment for the benefit of creditors.

Q. You hadn't talked with Paul Hymowitz about any assignment for the benefit of creditors before you prepared
683 it, had you? A. No, sir.

Q. So that— A. Just a second. May I—

Q. Was that your idea, to prepare that paper? A. Now may I answer that?

Q. I thought you did. A. May I modify it?

Q. Certainly. Change anything you want to. A. I am not sure whether I prepared the paper at my office before I went up to see Hymowitz or whether I prepared it while I was at Rikers Island visiting Paul Hymowitz.

Q. Well, you took a form over, didn't you? A. I had a form with me.

684 Q. Whether it was made out before you left the office or over there you say you don't now recall? A. That is correct.

Q. All right. The fact remains that you hadn't talked with Hymowitz about any assignment for the benefit of creditors before you put that form in your pocket to take over? A. That is correct.

Q. Yes. That was your idea? A. That is correct.

Q. All right. Was it your idea to put your office associate in as assignee? A. That is correct.

Q. His name was Kolman? A. That is right.

Q. How do you spell that? A. K-o-l-m-a-n.

Q. All right. Kolman was on a salary in your office? A. 685
He was on a salary basis and also had the right to practice in his own behalf.

Q. Well, so far as— A. He had the facilities in my office for that purpose.

Q. So far as this is concerned, at this time he was on a salary? A. At that time he was on a basis, that I just told you about.

Q. Well, anything that you had wasn't anything that he was practicing for independently, was he? A. Well, if I had the—he was supposed to work on my cases.

Q. For what you paid him? A. That is correct, and the 686
facilities—

Q. And the Hymowitz being your case— A. No. Let me answer—

Q. —was a matter which you would have him work on on the salary basis? A. No. I say in addition to the salary—

Q That is wrong, is it?

The Court: Let him answer, Mr. Corbin. One at a time, gentlemen.

A. In addition to the salary I also provided him with facilities. 687

Q. All right. The Hymowitz matter was your matter. It wasn't his matter, was it? A. That is correct.

Q. So that what he did on the Hymowitz matter was not practicing law by himself that you say he had the right to do, was it? A. If he was the assignee.

Q. If he was? A. And if it was due to him he was to receive it and I had no part of that.

Q. That didn't come off his salary? A. That did not.

Q. He did not turn any part of that over to you? A. He did not.

688 Q. He finally got $88, didn't he? A. Is that the amount he got?

Q. Well, you are asking me. A. Have you got the record?

Q. Have you? A. Not with me.

Q. Are you going to argue this case to the jury? A. I am not.

Q. Do you want to? A. No, sir.

Q. Are you interested? A. To what extent?

Q. To see these men suffer in jail for something you say they did. A. Not at all, Mr. Corbin.

Q. All right.

689 Mr. Walsh: I object to that.

The Court: I will overrule the objection.

Q. You are a straight, impartial, fair witness according to your own thought and feeling, isn't that right? A. I took the oath to tell the truth and I am going to tell it.

Q. Yes. And you are not going to color it to put them in jail, are you? A. I am not.

Q. All right. So you got Hymowitz to sign that paper that you prepared? A. I explained it to Hymowitz and he signed it.

Q. On the dotted line? A. On the line.

690 Q. Well, was it typewritten or did you fill out the form in ink? A. I think it was in ink. I am not sure. If you have it here I will be able to tell you much better.

Q. I was just wondering whether you remembered writing it out. A. I think I may have written it out, Mr. Corbin.

Q. You don't know me, do you? A. No, but I understand that you are a—

Q. I don't care what you think I am. A. Well, I think very highly of you, Mr. Corbin.

Q. Yes? A. Your reputation is such, anyway.

Q. Well, I am sorry I can't return the compliment. A. Well, I am not asking for your—

The Court: Very well, gentlemen. Let us get down to the case. 691

Q. Now let us see where we are at. You got the paper signed, didn't you? A. I did.

Q. And that gave a job to a man who was employed in your office? A. He was the assignee under a—

Q. I say, that gave him a job? A. He was the assignee designated in that assignment.

Q. Well, can't you understand my language? A. I understand your language. I understand your language.

Q. That paper gave him a job, didn't it? A. What do you mean by "a job"? 692

Q. It gave him a job to do for which he was going to get some cash, isn't that right? A. You mean received payment?

Q. Yes, cash. A. By order of the Court?

Q. In cash. A. Or by check?

Q. Well, all right, all right. Let us pass to something else. I think we got you. A. Maybe you haven't.

Q. All right. He did get some cash and you say you did not get any of it? A. He got a check and he cashed it, I assume, and he kept whatever he cashed, and I got no part of it.

693

Q. Then the point of my question was somewhere near accurate? A. Well, it was something to do about it.

Q. Something to do about cash. All right. You got a job too out of it, didn't you? A. You mean I was retained by the assignee?

Q. Oh, were you? A. I was.

Q. Well, first you got him a job and then he got you a job, is that it? A. (No response.)

Q. Did you talk with him about retaining you? A. I did.

Q. Did you tell him that there were a lot of other good

694 lawyers in New York that he could retain, he didn't have to get you? A. But possibly not trust.

Q. Oh, it was that you explained to him that he could trust you? A. I didn't have to explain it to him.

Q. You say he knew he could trust you? A. You can ask him later on.

Q. And you knew that you could trust him, didn't you? A. I certainly had had confidence in him and trust him.

Q. And did then have trust in him? A. And since then.

Q. And then, I say? A. And then too.

Q. All right. And with that utmost of mutual confidence and trust reposed by each in the other he, by virtue of the
695 paper, plus another paper, became the assignee and you became the attorney or counsel for the assignee; right? A. Well, by virtue—

Q. Right? A. I—

Q. Right or wrong? A. Will you repeat the question first?

Q. (Read.) A. The assignor made him the assignee and the retainer made by him made me the attorney for the assignee.

Q. All right. Now who did you represent? Who retained you? A. I was consulted by Mrs. Hymowitz, that is, Paul's mother, and by his brother Simon, and his
696 sister Flo.

Q. Well, didn't Paul, the debtor, the assignor retain you when you visited him on Rikers Island? A. He did not.

Q. Who authorized you to prepare the paper over there in longhand? A. He did.

Q. Well, he did ask you to do it and retained you to do it? A. No. He said that I should prepare the paper then and the paper was prepared to make Kolman as assignee.

Q. All right. But, he is the one who authorized you and the only one in the world who could authorize you to

do it, wasn't he? A. Well, the only one who can do it is 697
an assignor, Mr. Corbin.

Q. Well, why did you say you weren't retained by him to do it? A. I was not employed by him. I received no fee from him.

Q. You handle lots of matters without fees, don't you? A. Sometimes.

Q. Still employed? A. Pardon?

Q. Although you are still employed? A. Yes.

Q. Paul Hymowitz asked you to prepare the assignment over on Rikers Island, didn't he? A. Yes.

Q. That was an employment, wasn't it? A. Well, do you call it such— 698

Q. But you were there as a lawyer, weren't you? A. Yes, sir.

Q. He knew that? A. Yes, sir.

Q. And you had brought over a legal form and prepared it at his request for him to sign? A. Yes, sir.

Q. Do you say that wasn't an employment or a retainer? A. I won't argue the point with you, Mr. Corbin. If you say it is an employment or retainer, if it makes any difference, that is what it was.

Q. What do you say? A. I say he just requested me to fill out that paper for him to sign, retaining Kolman or, 699
rather, assigning that to Kolman.

Q. Well, did you tell him that you were going to be the attorney for Kolman? A. I told him I expected to be the attorney retained by Kolman.

Q. All this went on without any indication by you to Kolman, did it? A. I think I told Kolman before I went up there what I was going up there for.

Q. Yes. So you told him you were going over there to get him appointed? A. I think so.

Q. And told him if you did succeed that you would expect to be his attorney? A. I told him I would talk that over

700 with the assignor and I also discussed that with Kolman.

Q. Well, you had enough trust in Kolman to know that he would fix you up with a retainer if you got him appointed, didn't you? A. What do you mean by "fix you up"?

Q. Well, sign a retainer. A. I expected that.

Q. Thereafter didn't you regard that represented Paul Hymowitz or any of his family in the premises? A. To some extent, yes, his mother and sister.

Q. To what extent? A. That they had loans there totaling $1900.

Q. What extent did you regard that so that you continued to represent Hymowitz himself? A. If there was
701 any representation there it was only for one purpose, and that was to see that creditors got everything that could have been gotten out of that estate.

Q. And that was your sole purpose from the beginning to end, wasn't it? A. That was Hymowitz's wish, and I tried to carry that out.

Q. That was your sole purpose? A. To follow Hymowitz's wish and his parent's wish—or, rather, his parent's wish.

Q. Your sole purpose was to get the creditors every last dollar that they could get? A. My purpose there was to have an honest administration of the estate. That was the
702 main purpose.

Q. The main purpose? A. And also to see that the creditors felt kindly toward Hymowitz so that in the event that he got out of Rikers Island and wanted to go into business he could go into business on a much better basis than if it wasn't administered properly.

Q. And is that why you lied to the creditors about the value of the estate? A. I lied to nobody.

Q. All right. Let us see. A. Let us see.

Q. Let me show you a paper, and I ask you if you recognize it as a copy of a petition that you made to the Supreme Court in the assignment proceeding and verified

apparently on December 6, 1937. A. Do you say that is a 703
copy of the original? If you do I will take your word for it.

Q. Now let us not get throwing flowers.

Mr. Mintzer: The original is here.

Mr Schaehner: If you say, Mr. Corbin, that is a copy we will take your word for it.

A. Mr. Corbin, perhaps I can recall the statement you intend referring to.

Q. All prepared, eh? A. (No response.)

Q. Something in here that you think might occur to me as bothersome to you? A. No, bothersome to you. 704

Q. Oh. Well, I will take care of that. A. All right.

Q. Because you thought it might be bothersome to me is why you volunteered this remark, isn't it? A. No, I am trying to help out.

Mr. Walsh: I object to that.

Q. Trying to help me out? A. (No response.)

Mr. Walsh: Go ahead. If you say it is a copy, ask him a question.

Mr. Corbin: I think I will use this, Judge. 705

The Court: Very well.

Q. Let me show you this paragraph on the second page—

Mr. Walsh: Mr. Corbin, if you prefer to use this, this is part of Government's 2 in evidence (handing to Mr. Corbin).

Mr. Corbin: All right.

Q. "That thereafter and on the 25th day of March, 1937, an order was entered authorizing the assignee to qualify by filing a provisional bond in the sum of $1500."



706 Do you see that statement? A. Yes, sir.

Q. Now that does not mean that you actually entered that order, does it? A. No.

Q. Personally? A. No, sir.

Q. Somebody in your office may have done it? A. Yes, sir.

Q. Because you don't say that you did that yourself? A. Not necessarily.

Q. I say, the language merely is, "That thereafter" an order was entered. That is right, isn't it? A. It says an order was entered.

Q. Yes. Now you didn't do that yourself? A. No, sir.

707 Q. And that is why you drew the statement in that form? A. Not necessarily.

Q. All right. A. It may have been drawn in a different form.

Q. Then in the next sentence, "I thereupon arranged," and so forth, that means that you did that yourself personally, doesn't it? A. Not necessarily.

Q. No? A. No, sir.

Q. When you make an affidavit and say, "I saw somebody," does that mean that somebody else saw somebody? A. That is "I thereupon"—

708 Mr. Walsh: I object to that as argumentative.

The Court: I sustain the objection.

Q. What do you mean to tell this Court and jury when you say that "I" in an affidavit, that that means somebody else? A. It means me, I.

Mr. Walsh: I object to that question.

The Court: I sustain the objection.

Q. That means I, does it? A. (No response.)

Q. So when you said in this same paper—and you did verify it, didn't you? A. Is my signature there, verified?

Q. I will see. Is that your signature (indicating)? A. 709
That looks like it, yes.

Q. Twice? A. My signature.

Q. Sworn by you on December 6, 1937? A. That is correct.

Q. Whereabouts? Is that somebody in your office, the notary (indicating)? A. I don't recognize the name. What is the name there, Dody?

Q. I can't tell. A. That may have been in the same building. I think there was some insurance firm by that name.

Q. You prepared, signed, and verified and swore to the paper, right? A. I signed it and swore to it. 710

Q. Did you prepare it? A. I dictated it.

Q. All right. That is what we ordinarily refer to as preparing a paper, isn't it? A. I suppose so.

Q. Yes. Well, at the top of that page you say "I then" and the sentence before that— A. Do you want me to follow you while you are reading it?

Q. Yes. In the sentence before it says that the retainer was filed on the 25th of March. A. Yes.

Q. And the next paragraph is "I then immediately prepared a petition and order authorizing the assignee to qualify by filing a provisional bond" and so forth, is that right? A. What is your question? 711

Q. Now what I want to know is does that "I" mean I? A. In that particular sentence?

Q. In that particular sentence? A. You mean me personally?

Q. Just you, right, Robert Hoffman sitting right in the witness chair. A. No, sir. It means my office in that particular instance.

Q. It doesn't mean you? A. (No response.)

Q. You mean that you dictated and signed and swore to

712 a statement that wasn't true? A. Mr. Corbin, whatever is there I signed.

Q. Did or did you not? A. I signed to and swore to it.

Q. What is that? A. Whatever is in that paper I signed to and swore to.

Q. Was it true when you dictated it and swore to it? A. True to the extent that my office prepared it and had it filed.

Q. Was it true to the extent that it says "I then immediately prepared"? A. That I personally? Is that your question?

Q. Do you have to say "positively" or "absolutely" after
713 everything? When you say "I then prepared the paper" you meant it, didn't you? A. I said personally, not positively or absolutely.

Q. No. When you dictated it and when you signed it? A. Now what is your question? You have got so many in one—can we get that, please?

Q. When you dictated the words "I then immediately prepared the application for the bond"— A. Yes.

Q. You meant to say exactly what you dictated which was that you did that work? A. I did not do it personally.

Q. Well, why didn't you say so then?

714 Mr. Schachner: I submit that he said that twenty times already, if your Honor pleases.

The Court: Well, I am going to overrule the objection. This is cross examination.

Q. If when you were dictating this paper you intended to convey the idea, the impression, to the Court that not you but somebody else did that work, why didn't you say so?

Mr. Walsh: Objected to as argumentative.

The Court: I will allow it.

A. At that time I may have been under the impression 715
that I took care of it, but I later found out that Kolman, of my office, actually attended to it.

Q. Tell me, it is three years ago that you dictated, signed and swore to this affidavit? A. That is correct.

Q. You mean to tell us here that your recollection is better now than it was then, three years ago? A. Of course not.

Q. Then when you say that you dictated it, you were under the impression that you had prepared the application for the bond; isn't it true your recollection was better then and fresher than it is today, when you say now it was not you who did it? A. When that petition was prepared 716
I think it was about nine months after the order for the sale was obtained.

Q. It was in 1937? A. In December of 1937, about nine months after, and I think a lot of other proceedings took place that were enumerated in that petition.

Q. Now this morning you heard me read a portion from that affidavit that Mr. Schachner omitted, didn't you? You remember the occasion of my reading to the jury a portion of that affidavit? A. Yes, sir.

Q. Then when you went on the stand and Mr. Schachner asked you about the papers, only part of which was read to 717
the jury, then you said to him, or in answer to his question, in substance, did you not, that you didn't prepare that petition? A. I think that was the question and that was my answer.

Q. On December 6, 1937, fresh after the event, you swore that you did prepare it, didn't you? A. I swore to that petition that was dated December 6, 1937, and signed it, too.

Q. When you signed and swore to it you knew it contained a statement that you then immediately prepared that petition? A. I looked the petition over before I signed it.

718 Q. In fact, to repeat, you dictated it yourself? A. I certainly did.

Q. So that from start to finish this affidavit of December, 1937, was your own baby, your own child, your own language, and your own choice of words, right? A. I dictated that petition.

Q. And now you say that that is wrong, do you? A. I say that particular part of it is incorrect, to the extent that Kolman took care of obtaining that order for the sale.

Q. Did you understand that I was asking about Kolman, or you, or anybody else, obtaining the order for the sale? A. Isn't that affidavit in connection with an order for the
719 provisional bond and sale?

Q. I am not talking about obtaining the order at all. I am talking about the petition that Kolman verified over your signature, as attorney for him, in which he stated that the value of the entire estate was $1500. You know what I am talking about, don't you? A. Do you mean to say, Mr. Corbin, that the petition that was signed by Kolman in connection with getting an order for a sale—

Q. And a bond. A. Had also my signature?

Q. It was in your own office folder, wasn't it? A. It was in my office folder?

720 Q. Yes. A. Every case I have in my office of my own is in my own office folders.

Q. Let me show you a paper and ask you if you prepared this paper? It is marked. It is in evidence here as something or other—

Mr. Walsh: That is Government's Exhibit 2, Mr. Corbin, that is from the assignment file.

Mr. Corbin: Government's Exhibit 2?

Mr. Walsh: Yes, sir.

Mr. Corbin: Thank you.

Q. Did you prepare that paper personally (handing to witness)? A. It was prepared in my office. 721

Q. Did you prepare that paper personally? A. When you say "prepared" do you mean typed or dictated?

Q. I don't mean you put your fingers on the typewriting machine. Did you dictate that paper? A. I may have told the stenographer to—

Q. Did you? Did you prepare that paper?

Mr. Walsh: I think the witness should at least be allowed to answer one question before five more are put to him.

The Court: The witness can answer yes or no, or that he don't remember, or he can answer with an explanation. Counsel is entitled to an answer whether he did or did not, if he knows; if not, he can so state. 722

A. I think I told the stenographer to dictate that particular form of retainer.

Q. That particular form of retainer? A. There are different forms of retainers, Mr. Corbin. In other words, this is a retainer by the assignee.

Q. Let me see it. (Witness hands paper to Mr. Corbin.) I, S. Kolman, as assignee of Paul Hymowitz, under an assignment dated March, 1937, do hereby retain Robert Hoffman as my attorney in this proceeding. You say you didn't prepare that? A. I may have prepared it by telling the stenographer to get up that particular form of retainer. There are forms in book form, Mr. Corbin. 723

Q. Have you got to go to a book of forms to prepare such a paper? A. No, sir, I save myself time and trouble and just put my name on it.

Q. You could dictate it quicker than doing it that way. Look at the paper again. Is it not a fact to your present recollection— A. (Interrupting) I don't know. It may

724 have been prepared at my instructions, most likely it was.

Q. Prepared at your dictation? A. I don't think it was dictated.

Q. Would you say it was not? A. It may have been, I wouldn't say it was or was not, it may have been.

Q. You say that paper may have been prepared through your dictation. Let me show you another paper from the same file, and ask you if that was prepared by you personally on the same day, written out on the same machine, the date filled in on the same machine, and not in handwriting as in the other paper. A. What is your question?

Q. Did you prepare that personally? A. Did I prepare
725 this paper?

Q. Yes. A. I think Kolman may have prepared that or the auctioneer may have prepared that together with Kolman. Is that the order for the sale? I think it may have been prepared at the auctioneer's office. I know Kolman at that particular time was going back and forth from the auctioneer's office to my office. There were certain mimeograph copies gotten out that day, and so I think—

Q. (Interrupting) So you had the auctioneer working for you, preparing legal papers? A. I didn't say he prepared legal papers.

726 Q. You say he may have prepared it for you. A. I said Kolman and he were working together.

Q. I don't care who the auctioneer was working with together or whether he worked for you in the preparation of that paper. A. I don't think that the auctioneer prepared it. I said it may have been prepared at his office.

Q. On his machine, down at his office? A. It may have been at his office.

Q. Was the retainer that Kolman signed retaining you to act for him as assignee prepared in the auctioneer's office? A. If it is at the same time, it may have been prepared at the auctioneer's office by Mr. Kolman. That is possible, too.

Q. Anything is possible. A. Well, that is probable. Let 727
us put it that way.

Q. Now it is probable. A. That these were prepared at Mr. Wishbow's office during which time Kolman was there.

Q. So that now your best guess is neither one of these papers was ever prepared in your office; is that your best guess? A. I think it is.

Q. And your best guess is you didn't have anything to do with either one of them? A. Yes, sir, I had to sign that paper before it was sent out.

Q. Before it was written out? A. No, I think Kolman 728
may have prepared that or had it prepared.

Q. Both of them? A. I think so.

Q. On the same day? A. If they are dated the same day.

Q. They are dated the same day. Ann Squire, do you know who Ann Squire is?

Mr. Walsh: May I suggest that you describe the paper so that the record will at least be clear.

The Court: Let him examine the witness.

Mr. Walsh: Your Honor, I wish you would let the record be clear. It is already in evidence as Exhibit 2. It is filed from the assignment bureau, 729
County Clerk's office. It is in the record.

The Court: Well possibly to clarify the record, but if he desires to cross examine the witness any other way, he has a right to do so as long as it is on relevant matters.

Mr. Walsh: I didn't make any objection. I merely made a suggestion to Mr. Corbin.

The Court: Overruled. He may cross examine him as he sees fit. If the witness doesn't understand the question he has a right to explain why.

730 Q. I asked you did you know who Ann Squire was? A. I don't know.

Q. She appears to be a Commissioner of Deeds who signed a paper from Exhibit 2 that I show you here. Was she in your office or in your building? A. She was not in my office.

Q. Was that paper prepared in your office, the one I am showing you now? A. I don't think it was.

Q. Where was this auctioneer's office where you had your legal work done, or some of it? A. The auctioneer's office was at 40th Street, I believe.

Q. And you said you were at 33rd Street? A. Yes, sir.

731 Q. You had somebody going back and forth to that office getting papers and having them prepared and taking them back and forth? A. I think Kolman might have done that, or Wishbow may have gone back and forth. Wishbow had a machine for mimeographing papers.

Q. These are not mimeographed papers. These are original papers produced from the typewriting machine itself. A. I have the notice of sale where the mimeographs were made.

Q. Let us forget those. I am talking about these papers. A. This doesn't look like a mimeograph paper (indicating).

Q. Was it customary to have Wishbow going back from your office and vice versa, to prepare and return legal

732 papers? A. I think that is the first time that Wishbow ever done any work for me.

Q. Has he been doing it since? A. I think in one matter.

Q. Typewriting? A. No, acting as an auctioneer.

Q. Did he have a typewriter up in his office? A. I don't think so. I have never been in his office.

Q. Has he a stenographer? A. He may have.

Q. You don't know if he has got a stenographer or typewriter? A. I couldn't tell you.

Q. You don't know whether he had either one of them then? A. Either what?

Q. In March of 1937, either a girl stenographer or a man stenographer or any kind of a stenographer, or a typewriting machine? A. No, I don't know that. 733

Q. Well, did you have a typewriter down in your office? A. Oh, yes, we had several.

Q. "We?" A. Yes, sir.

Q. You mean you and Kolman? A. No, I have another office associate.

Q. Wasn't Kolman located in your office? A. He was.

Q. Who was the other man? A. Parodneck.

Q. Did you have a girl there that ran a typewriting machine? A. I had two.

Q. Two. All right. 734

Q. You notice the two papers we are talking about are in rather small type, compared with some other type, or don't you? Let me show you that (shows to witness). A. These are about the same size, I think larger type (indicating).

Q. It is slightly smaller type than the usual type that you see. A. I say that which you have in your right hand, it is smaller in type than the one you have in your left hand.

Q. What I am wondering at is whether the character of the type used in the preparation of these two papers we are talking about looks familiar to you as the character of the type that your typing machine produces? A. Well, I have only one machine of my own. The other machine is used for the work of the other attorney. Sometimes in a pinch we use two machines. 735

Q. Does this look like the type, like the kind of papers that your machines, or either of them, turn out? A. Well, I know the one you have in your left hand is the type of machine that I owned, or I had there in 1937.

Q. How about the other machine? A. I am not familiar with the type on the other machine.

736 Q. You never knew Wishbaw before this case? A. I don't think I did.

Q. How did you get in touch with him? A. I communicated with a firm by the name of Joseph, I think it was, and they told me that he had died.

Q. Joseph died? A. Some years before.

Q. Joseph died, you learned? A. Yes, sir.

Q. And Wishbaw, what about him? A. And they referred me to Wishbaw and gave me his phone number. They said he was handling matters of auctioneering.

Q. Then he came over to your office? A. I think he did.

737 Q. And you told him to get ready to sell that stock on the Bowery? A. No. I think we went down to the store premises and there met Mrs. Hymowitz.

Q. You retained Wishbaw to act as auctioneer? A. When?

Q. Some time or other? A. Sometime. I mean formally he was obtained by the assignee.

Q. Did you agree with him on what his compensation would be? A. No. He said he would be very reasonable in amount. I think there was a minimum there of 6 per cent, if I am not mistaken, but he said he wanted to go

738 down and see what the situation was. I think there is a statute that permits up to 10 per cent.

Q. You and Wishbaw got very friendly, didn't you? A. He is nice, pleasant sort of chap.

Q. He likes you and you like him? A. There is nothing wrong in that, as far as I know.

Q. Okay. That is all right by me. He got a lot more than 6 per cent? A. Out of this one?

Q. How much did he get? A. 5 per cent.

Q. Well, in dollars? A. I couldn't tell you. You have the record here.

Q. Didn't he get around $300 or over? A. Half went to 739
Lipkowitz, another auctioneer, put in here by the defendants.

Q. You didn't like that thought, did you? You didn't want anybody going in on Wishbaw's fees?

Mr. Walsh: I object to that as argumentative.

Mr. Corbin: It is obvious from the way he said it.

Mr. Walsh: I object to the argument by Mr. Corbin.

The Court: Objection overruled to the last question as to whether he wanted Lipkowitz to come in here.

740

A. No, I didn't like Lipkowitz in the picture.

Q. And you don't find any difficulty in expressing yourself when you feel a little put out about something? A. About what?

Q. About anything? A. Well, you usually talk the way you feel.

Q. And, incidentally, you felt pretty sore down there before Judge Coxe that day, didn't you? A. I was pretty sore, very much.

Q. And you acted accordingly, didn't you?

Mr. Walsh: I object to that.

The Court: No. 741

Q. That day you ran right up to the FBI to squeal on somebody? A. No. I went to Referee Kurtz and he suggested that I tell my story to the Federal Bureau of Investigation. Now you have got it in. You asked me for it.

Q. I did? Now you got it in, what was ruled out on direct examination as to what Kurtz told you. You, as a lawyer, knew when making that answer now that you were trying to make a real effort to put something in the record that should not be in? A. Your questions are not coached in such clear language.

742 Q. That is why you tried to put that over? A. I tried to?
Q. You squealed to the FBI.

Mr. Walsh: I press my objection.

The Court: Objection sustained.

Mr. Corbin: Well, he said I did not. Does the answer go out too, your Honor?

The Court: Yes, the answer goes out too.

Mr. Corbin: I would just as soon let it in.

Q. Why did you go to the FBI for, a pink tea? A. No. I was asked by Referee Kurtz to tell my story to the
743 Federal Bureau of Investigation.

Q. And you told them plenty, didn't you? A. Why, they came down to his office.

Q. And you got right on the job with them and worked with them, tried to get wires placed so that the conversation could be heard that you set up? A. No, they got on the job.

Q. Not through your efforts at all? A. I had to cooperate with them when they asked me.

Q. And you did cooperate with them completely, day in and day out? A. I did.

Q. And you were awfully glad to do it? A. I was not.
744 Q. Tickled to death to do it?

Mr. Walsh. I object to that as argumentative.

Q. You say that Paul Hymowitz had some claims against him. Did you inquire as to the nature of those claims? A. I did.

Q. What were they for, just briefly? A. Money loaned.

Q. Real cash that you understood and believed was money loaned? A. I think there were some bankbooks showing withdrawals.

Q. Well, then they had perfect legitimate honest claims against Hymowitz? A. To some extent.

Q. You told us to the extent of $1900. A. As far as I knew there were some withdrawals from certain savings accounts. I didn't check up the entire $1900. 745

Q. At least you were satisfied from the checking you did make and what they did made that they had perfectly valid 100 per cent good claims to the extent of $1900 for their part? A. There were some claims there for moneys loaned.

Q. To the extent of $1900 or thereabouts? A. From what they told me, $1900.

Q. You were satisfied that those claims were good? A. I thought so.

Q. You say you advised this poor old lady that had such a time with the store, and was what, 80 years old? A. She was quite old. 746

Q. Or over? A. I don't think so.

Q. You advised the old lady to give up her claim against the estate of her son? A. I think she volunteered to do that.

Q. You didn't allow that, did you? A. I certainly did.

Q. Why shouldn't the old lady come in first, if anything? A. Because she wanted the creditors to get as much out of that estate as possible, and she figured that when Paul Hymowitz got out of jail, that he would try to go back into business, and if the creditors got more out of the estate that he would have a better standing in the market. 747

Q. When you say "creditors," she was such a creditor? A. She was not a merchandise creditor.

Q. No. But if she got 100 per cent, that you referred to in your letter to the creditors, she could help to put him back?

Mr. Walsh: No 100 per cent.

Q. As near as possible. I am coming to that. A. You will find, Mr. Corbin, that in the total of approximate liabilities set forth in that letter that went to all the creditors, that $1900 is not included.

48 Q. I know that. A. The intention on their part was to waive the $1900. On the other hand, if that $1900 was added to that $2500—

Q. Now if this claim for $1900 or thereabouts was so good, was so satisfying to you and valid and so backed up in part at least by bank books and bank withdrawals and documents, why did you let his family that had advanced that money say or even express a willingness to give it up? A. Because if I thought that if Paul Hymowitz got out of jail and wanted to reestablish himself in business and the creditors got more money out of that estate they would feel more kindly towards him and extend credit to
49 him.

Q. So you— A. I thought—

Mr. Walsh: Let him finish.

Mr. Corbin: All right. I thought he was finished.

Q. Go ahead. A. On the other hand, if the creditors received lesser amounts or smaller dividends they might feel differently towards Hymowitz and shut off all credit.

Q. And Hymowitz in jail. Yes. Hymowitz at that time was in jail.

Q. So you wanted his poor old mother to pay, in effect
50 to pay the creditors to the extent of $1900? A. I didn't ask her to do that, Mr. Corbin.

Mr. Walsh: I object to that question.

The Court: I will overrule the objection.

Q. All right. You say now they were willing to give it up: right? A. Yes.

Q. Did you get a paper signed by them that they were willing to give it up? A. I got such a paper.

Q. Not for months, did you? A. I have it here. I can tell you—

Q. Not for months after March? A. The paper would 751
state the date when it was signed.

Q. I say it wasn't for months afterwards? A. It may have been months later at Schulman's request, at some time later.

Q. Certainly. A. I think the papers will tell you just what the date is.

Q. And from the very beginning, even at that creditors' meeting on March 25th they wanted to make sure that these relatives would not make the claims that you said they would not make, didn't they? A. I told them at that meeting—

Q. Can you answer that yes or no? A. You are talking 752
about the March 25th meeting?

Q. Yes. A. At the Dry Goods?

Q. Yes. A. Now what is your question?

Q. The creditors wanted to make sure that those family claims would not be presented, didn't they? A. They mentioned that when I told them that in the event there was a petition in bankruptcy those claims would be asserted and not waived, but if this thing was settled if this thing was permitted to be properly administered those claims would be waived.

Q. Well, there was a petition filed in bankruptcy, wasn't 753
there? A. Not at that time.

Q. No, but later. A. Yes.

Q. And did you file these claims for the family? A. There were no claims filed. I don't believe any others filed claims because I think it was dismissed shortly after it was filed.

Q. The fact is, is it not, that there never were any family claims at all? A. I think I have a receipt in my file from Paul Hymowitz in which he took back from me one of the bank books which showed the withdrawal of moneys. I think either Flo Hymowitz or by his mother, and I under-

754 stood from them that that withdrawal went into the store and was part of the $1900 claimed.

Q. You say they told you that? A. Yes, sir.

Q. Well, did you ever notice that any moneys went from Hymowitz to his mother? A. There may have been exchanges, is that what you mean, Mr. Corbin?

Q. Yes. A. There may have been a certain transaction that I don't know about.

Q. And didn't you realize that it was your duty as attorney for the assignee to inquire into any claims that Hymowitz might have against any members of his family for loans or advances to them? A. That may not have been
755 necessary where they were willing to waive their claims, Mr. Corbin.

Q. Yes, but as counsel for an assignee for the benefit of the creditors it is your duty, generally speaking now, to collect every asset that is possible? A. That is absolutely correct.

Q. Including any claims that may be made against the family, of course, or against anyone else? A. To collect claims from any source.

Q. Right. Now you weren't in any position to try to collect claims if there were any from the family, were you?
756 A. Why wasn't I?

Q. Why, the family had retained you, and the man that made the assignment had retained you, and you had prepared the assignment in his presence and had him sign it and you had the assignee in your office. A. There wasn't any possibility that any such moneys that they paid back would have exceeded $1900.

Q. Didn't you feel very uncomfortable in the position you occupied? A. I didn't feel too happy about it, Mr. Corbin.

Q. No. But you knew you couldn't carry water on both

shoulders representing that outfit and the creditors, too, 757
didn't you?

Mr. Walsh: I object to that characterization.

The Court: Yes. I sustain the objection.

I believe, gentlemen, this is a very good place to take a recess. We will adjourn court until ten-thirty tomorrow morning.

(Adjourned to Thursday, July 18, 1940, at 10:30 a. m.)

UNITED STATES OF AMERICA

—against— 758

MORTON GOLDMAN, et al.

New York, July 18, 1940.
10:30 A. M.

TRIAL RESUMED.

ROBERT HOFFMAN, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. When we adjourned last night we were talking of the 759
uncomfortable position that you were in representing both the bankrupt and his creditors. Do you remember that?

Mr. Schachner: I object to that.

The Court: Objection sustained.

Q. Did you tell us last night you didn't feel very happy about the position you were in, in that regard? A. I say it may have been, or it might become an embarrassing position.

Q. You said you were not very happy about it when I

760 asked you if you felt comfortable, didn't you? A. I don't remember the exact words, Mr. Corbin.

Q. Well, that in substance? A. In substance just as I told you.

Q. Not as I just said? A. I don't think so.

Q. Just before recess last night I asked you this question.

"Q. Didn't you feel very uncomfortable in the position that you occupied?" And you answered: "I didn't feel too happy about it."

Now is it not a fact— A. That was your question and that was my answer.

761 Q. And these creditors and lawyers for the creditors suggested that they should have, the creditors, should have joint control, that didn't strike you at the time as improper, an improper request in any regard, did it? A. At that time it didn't seem improper, but it seemed very unnecessary.

Q. It seemed to you unnecessary? A. Yes, sir.

Q. That is, you felt you could represent the debtor Hymowitz, and his family and relatives, and also the assignee and the general creditors without any unhappiness about it at all, is that right?

Mr. Schackner: I object. Counsel has suggested
762 that Mr. Hoffman represented the debtor.

Mr. Corbin: I could not hear that.

The Court: I will overrule the objection. He knows whom he represented. I think the question is proper.

A. Well, I felt this way, Mr. Corbin—

Q. Did you feel that way? A. Not the way you put it.

Q. You thought you could represent everybody, and no other lawyer and no other creditor should have anything to say about that estate at all; is that what you felt? A. That is not true.

Q. And when they asked you to give them joint control, just have another assignee with your office man there, and they another lawyer in with you, who represented the debtor, Hymowitz, you knew that was a proper request under the law, didn't you, as a lawyer? A. I said before the request may have been proper but it was not necessary under the circumstances because, as I stated before, I offered to give them every opportunity to investigate every fact in that case at that time. 763

Mr. Schachner: Your Honor, I object to the question.

The Court: Objection overruled. 764

Q. Tell me, you knew it was a perfectly proper request? A. Proper request it was.

Q. But you didn't like it? A. No, I thought it was wholly unnecessary. Wait until I get through, gentlemen—

The Court: Just a moment.

Mr. Corbin: He has answered the question, your Honor.

The Court: No, he didn't complete his answer. Let him answer the question, and as long as it is responsive to your question, I will allow it but if it becomes irresponsive I will not. 765

Mr. Corbin: He has answered it categorically.

The Court: He is trying to make an explanation. Go ahead.

A. (Continued) I told Mr. Kandell and Theodore Goldman it was wholly unnecessary because I saw no complications there. Further, that there was a small estate involved and still further, they might have access to any information they might desire. I told them they could examine any of the debtor's papers or books or records, which the assignee had or the debtor might furnish.

766 Mr. Corbin: I move to strike out the answer as not responsive in the slightest degree.

The Court: Motion overruled.

Mr. Corbin: Exception.

Q. If there were a co-assignee and a co-attorney appointed, that would not increase the expenses of the estate at all, would it? A. I don't think it would, Mr. Corbin. It might and it might not.

Q. Whatever the attorney was allowed would have to be divided between two attorneys, and what were the statutory commissions would have to be divided among the two, under
767 the law? You knew that, didn't you? A. Now you have two or three questions there. Please let me answer one at a time. Now which one do you want me to answer first?

Q. You ran the "show"? A. You are running it now.

The Court: Proceed and ask another question. He has given a categorical answer. I am going to let you proceed and ask him another question.

Q. If there were two lawyers in the case they would have to divide their fees, and if there were two assignees they would have to divide their commissions, is that right?
768 A. Not necessarily.

Q. All right. I will take that answer. A. Do you want me to explain that?

Q. Do you want to explain? A. Yes, sir.

Q. Well, go ahead. A. All right. Insofar as the assignees are concerned, the statute permits a certain percentage. That would have to be divided between the co-assignees, and so far as the attorneys are concerned, the Court fixes the fee of the attorney. The Court may or may not fix a greater fee where there are two attorneys representing the assignee. It may fix a lower fee where there is only one assignee. That is a possibility.

Q. Why you didn't want them in was that it would cut 769
down, we will say, it would probably cut down what you and your office employee Kolman, would ultimately get out of it in money, isn't that the reason? A. The answer to that is if there were co-attorneys I would get less, they would get part of the fee; right. I say this: If there were a co-attorney and the co-attorney got part of the fee, of necessity I would get a lesser amount.

Q. Then your answer is yes? A. Yes, sir—to what?

Q. To my question. A. What is your question?

(Question read.)

Q. Did you hear the question? A. Which one? 770

Q. You are getting very smart this morning, aren't you? A. Mr. Corbin, I am not as smart as you and I never hope to be as smart as you.

Mr. Corbin: May I have the question read?

(Record read.)

Q. All right. Did you represent the debtor throughout this whole matter? A. I did not.

Q. Never represented him? A. In what?

Q. In connection with the Hymowitz insolvency, the assignment and all the proceedings. A. Why, there is one 771
paper there that was given to Mr. Schulman in which I stated that I was going to represent the debtor but solely for the purpose of having the petition in bankruptcy dismissed.

Q. Tell me, did you represent Hymowitz all the time from the day that the assignment was made down to the time when the proceedings were closed? A. To the extent that I signed that affidavit in the motion to dismiss the petition in bankruptcy which affidavit was prepared by the firm of Goldman, Malter & Goldman.

772 Q. You told us yesterday that you did not represent Hymowitz, didn't you? A. I did not.

Q. And you heard Mr. Schachner here this morning make an objection upon the ground that you did not represent Hymowitz, didn't you? A. Possibly he objected to the form of your question.

Q. And the fact is that you did represent Hymowitz at all times? A. To that extent.

Q. Outside of any paper, record, the fact is that you knew that you were there to take care of Hymowitz. That was your object, wasn't it? A. Why, there wasn't anything that Hymowitz had to be taken care about, as far as I
773 could see in that case.

Q. And you represented him, didn't you? A. In this case?

Q. Not this criminal case. A. In this insolvency case?

Q. All the way through. A. To the extent that I told you, Mr. Corbin.

Q. Just on the application of the bankruptcy motion? A. That is correct.

Q. Did he pay you for that? A. He did not.

Q. How much did you pay Kolman? How much salary? A. $15 a week.

774 Q. You had a case where you filed a petition in bankruptcy against the debtor after he, the debtor, had made an assignment and filed it upon the ground that the assignee had formerly represented the debtor, didn't you? A. Which matter are you referring to, Mr. Corbin?

Q. I am referring to any matter. Did you ever have such a case? A. I don't recall.

Q. On April 26 you gave a receipt, signing it under that date, April 26, 1937. I show you a copy. Do you recall that (handing witness)? A. Do you say that this is an exact copy?

Q. Just answer my question.

Mr. Corbin: May I have an answer to the question, Judge? 775

The Court: He is asking you if you recall whether that is a copy or not. Do you or do you not?

The Witness: I can't tell unless I see the original, Judge.

The Court: Very well.

Mr. Schachner: Mr. Corbin, please identify it. What is it?

Mr. Corbin: It is a receipt in the assignment proceedings assigned by him.

Mr. Walsh: If you say that is a correct copy, that is all that is necessary. 776

Mr. Corbin: Well, I can't say it.

Mr. Walsh: From what exhibit is it?

Mr. Mintzer: Exhibit 14, Mr. Walsh.

Mr. Schachner: It is Exhibit 10 (handing to Mr. Corbin).

Q. I see in the original that you wrote something in, or I will ask you: Is that handwriting of yours in that receipt (handing witness)? Was that yours or not? Do you see that part that is in there in longhand over the typewriting? A. This is either in my handwriting or in Mr. Schulman's handwriting. Now there is a copy of this 777 that Mr. Schulman has.

Q. I didn't ask you where any copy was. I haven't said a word about Schulman. Can't you identify your own handwriting?

Mr. Schachner: Your Honor, I would like at this time to object against the use of Exhibit 10 for this purpose. Exhibit 10 is a copy of an original, the original of which is in defendants' possession. Now the handwriting appearing on that cannot properly be probative of anything since it was merely a copy

778 for Mr. Hoffman's personal use. I don't see the relevancy of whether it is Mr. Hoffman's or Mr. Schulman's handwriting.

The Court: Well, I will overrule the objection. The question is whether or not that is his handwriting. If he knows, why, he can state. If he does not know, he can so state. I will overrule the objection.

The Witness: Judge, the only reason I can't tell at this time is a heavier ink and a heavier handwriting where my signature is, and that is in a lighter line, and smaller handwriting, and I can't state at
779 this time definitely whether that is mine because Mr. Schulman's signature is right above and that is in lighter ink and I can't tell now whether it is his handwriting or mine, but I do know—recollect that the same thing was put in another copy which was given to Mr. Schulman, which is over my signature.

Q. Then you don't know your own handwriting? A. I don't say that, Mr. Corbin. That is my signature there.

Q. Well, will you read to the jury what that says, whether it is your handwriting or somebody else's; you can read it, can't you? A. "As attorney for Paul Hymowitz in the
780 foregoing proposed bulk sale and settlement, I hereby authorize the said Jacob P. Schulman to make distribution of the funds mentioned in the foregoing instrument on the terms herein set forth."

Q. That is what you signed, isn't it? A. That is my signature.

Q. And were you attorney for Paul Hymowitz in the "Proposed foregoing bill of sale and settlement"? A. Well, in connection with the dismissal—

Q. Just yes or no. A. —of the petition in bankruptcy.

Q. You told us that but you said you weren't his at

torney in any other regard. Now here is one where you signed yourself as attorney for him in the "proposed foregoing bill of sale and settlement." A. Well, Mr. Corbin, if you want to know— 781

Q. Were you attorney for him in that matter? A. Are you through with that question?

Q. Were you attorney for him in that matter? I want to know yes or no. A. Under instructions of the Federal Bureau of Investigation on the 26th day of April, 1937—

Q. I haven't asked you anything about the Federal Bureau of Investigation.

The Court: Just a minute, gentlemen. The question is: Were you attorney for him at that time in that matter or not? Were you or not? 782

The Witness: Actually not.

Q. So that is a lie over your signature, is it? A. It is not.

Q. All right. Here is something else, Mr. Witness: A letter dated April 26, 1937, apparently signed by you. I ask you, did you sign that paper (handing witness). A. I did.

Q. Do you see some handwriting insertion in the body of it? A. You mean that part where it says, "In connection with the proposed sale and settlement"? 783

Q. Yes. That is what the handwriting says? A. Yes, sir.

Q. Is that in your handwriting? A. I would say it was.

Q. Well, let me read this to you and to his Honor and the jury: "In my behalf as attorney for the assignee and as attorney for Paul Hymowitz in connection with proposed sale and settlement I hereby authorize," and so forth.

In view of that do you say that you weren't representing, as attorney for Paul Hymowitz, in the assignment proceeding? A. Only for the particular purpose of having the

784 petition in bankruptcy dismissed and carrying out the scheme of the defendants.

Q. Were you representing Hymowitz in the proceeding? A. Only to the extent that I just testified.

Q. Were you representing him in connection—to use the words that you read then—in connection with the proposed sale and settlement?. A. Yes, and part of that would be the dismissal of the petition in bankruptcy.

Mr. Schaumner: For the record please state what exhibit you were reading from.

Mr. Corbin: This exhibit is 2-C that I read from.

785

Q. You went over to the store of Hymowitz on the Bowery, didn't you? A. I did.

Q. When were you first there? A. I should say several days before the 24th of March. It might have been a day or two before the 22nd of March, around that time, Mr. Corbin. Before the 24th of March.

Q. Was it before you got the assignment executed? A. It's very likely that I went there possibly the day before. That's possible.

Q. Was there anyone there when you were present? A. I think—yes. I think there were the following: Paul's

786 mother, I think his wife was there; possibly some other person.

Q. Was Sam Rich there? A. Sam who?

Q. Rich—R-i-c-h. A. I don't recall that name, Rich.

Q. You don't know Mrs. Hymowitz's brother? A. You say Paul's wife's brother? I may have met him, and if I did, I may have met him about once or twice. I can't recall the name.

Q. You know Sam Rich, don't you, Mrs. Hymowitz's brother? A. Now in what respect? Do you mean whether I met him or—

Q. Certainly you knew the name when I mentioned it, didn't you? A. I did not.

Q. He was over there at the store on the Bowery the night that you came over before the 24th of March? A. That's possible. 787

Q. You know that, don't you? A. I say he may have been there.

Q. And what was he doing? A. What do you mean?

Q. I mean just what I asked. A. What do you mean, "What was he doing"?

Q. What was he doing in the store when you got there? A. He was in the store.

Q. All right; what doing? A. I don't recollect what he was doing.

Q. Charles Rich, his brother, was there also, was he not, on that occasion? A. I couldn't say. 788

Q. And they were taking an inventory of the stock, were they not? A. They may have been looking the stock over, yes.

Q. They had the bills out, both the unpaid bills and the paid bills and had been working there as you were informed when you got there around five o'clock in the afternoon, that they had been working there all day on that job, making an inventory and finding out where the stock stood and where the debts stood? A. They may have been doing that, Mr. Corbin.

Q. You were told that, weren't you, when you got there? 789
A. It's possible I was told that.

Q. That was the initial meeting, wasn't it, with you on this matter? A. No, no. There was one meeting before that, I told you, when I was consulted.

Q. That was the first time in the store at any rate? A. Yes.

Q. And you stayed around there a couple of hours while and until they finished their work and added up the figures from the bills and the checking of the stock; that is right, isn't it? A. I may have been around there a couple of hours.

790 Q. And—A And that may have been in connection with the visit that I made to Paul Hymowitz either the following day or two days after that, and that may have been to bring Paul Hymowitz certain records so that might refresh his recollection in connection with finding out what the assets and liabilities might have been.

Q. I will be satisfied if I refresh your recollection. A. I will be glad if you will.

Q. And they were taking the inventory and recording the figures on cardboards, the bottoms of shirt boxes with the sides knocked off; do you recall that? A. No.

791 Q. And they finally completed it while you were there; you remember that, don't you? A. I don't remember whether they completed it.

Q. And they wound up the job and they closed up the store and you all walked off together; don't you remember that? A. I know I left the place.

Q. Don't you remember that, the first time you were at the store at all? A. Remember what?

Q. That the job was completed while you were there and you all left together. A. Which job?

Q. The job of making the inventory and taking the figures from the bills showing the cost of the stock and the amount on hand. A. I told you I don't recollect that phase of it.

792 Mr. Schachner: Your Honor—

Q. Well, what were they doing in the store—

Mr. Corbin: Oh.

Mr. Schachner: Oh, your Honor, I meant to object to this line of questioning since the witness has testified that he does not recall.

The Court: I will overrule the objection.

The Witness: What was the question?

(Question read.)

Q. What were you doing there for a couple of hours? A. 793
Why, I may have told them to get the bills together and any correspondence they might have there so that when I go up to see Mr. Hymowitz I could take those records along and have him check those back because he had been sent to jail so fast that he had no opportunity to do anything about his business, and I thought he was—

Q. You think you may have told them to get the bills together? A. I think that is what I did tell them.

Q. I know, but that wouldn't take more than a couple of seconds. What were you spending two hours of time there doing? A. In the first place, I don't know whether I was there two hours, Mr. Corbin. 794

Q. We have gotten past that. You were there around five o'clock until seven o'clock that afternoon, weren't you? A. I don't know whether I got down there five o'clock that afternoon. I may have gotten down there later.

Q. All right. You were there some time and you were there winding up all the work that those men had been doing all day long, as you were then informed, of taking careful inventory of the stock; isn't that substantially correct? A. Maybe. I can't answer that.

Q. You can't deny that? A. Well, I won't deny it.

Q. All right. A. That may have been.

Q. What was the final figure that they reached when the job was done? A. Who reached? 795

Q. Sam Rich and Charley Rich and you. A. I don't know if there was a Charley Rich there and—

Q. All right; Sam Rich? A. I don't think I would even recognize him if he were here in court today, Mr. Corbin.

Q. You think that is going to answer my question? A. Well, you asked me what those people did. I don't recollect what they did.

Q. I asked you what the figure was. A. I don't remember any figure, whether or not there was even a figure submitted to me at that time.

796 Mr. Schachner: Your Honor, I would like to object to this line of questioning. It is manifestly unfair to ask the witness whether or not a figure had been arrived at if he doesn't even recall whether anybody was there to arrive at a figure.

The Court: Well, I will overrule the objection. He is on cross examination. Of course if he doesn't remember he may state that he doesn't remember, but the counsel has a right to see if he can refresh his memory about any of those things, so I will overrule the objection.

797 Q. Didn't you question Mr. Sam Rich as to the value of the stock on that occasion? Answer me that first. A. The only reason—I don't recollect, Mr. Corbin. The only reason I may have asked him, if I did, that would be only on the basis if he knew anything about the value of the stock or of the store; if he did and if he knew anything about it I may have asked him a question as to value. Otherwise I don't think I would ask him any question as to value.

Q. Well, you knew that Sam Rich had had more than 20 years of experience in the men's furnishings field and was fully aware of values of such merchandise, didn't you? A. I don't recollect that, Mr. Corbin.

798 Q. Didn't you know or weren't you informed either then or as a matter of discussion among the relatives at which you were present there, that Rich had bought and sold hundreds of such stocks of merchandise in bulk and otherwise over a period of over 20 years? A. I don't recollect that.

Q. And didn't you know when you got there, at least whether you knew before or not, that Sam Rich was there to inventory that stock and appraise and value it? A. I say that is possible, that there may have been somebody there other than Paul's mother and wife.

Q. Don't you know that he was there to appraise the stock and value it? A. To appraise it and value it? No. 799

Q. And to inventory it? A. I said to collect bills and records and whatever papers there were, that I might need to take up to Hymowitz so that Hymowitz could refresh his recollection, because Hymowitz was the one who would really know what the situation was.

Q. Is this true, that a detailed and itemized inventory was taken and that the prices were taken from the bills on that occasion? A. At that time?

Q. Yes. A. I don't think it is so, Mr. Corbin, because I know the auctioneer took several days to find out what that was all about, and he had several men working there, 800 and they are quite experienced on this thing.

Q. Is this true, that Sam Rich wrote down the items and the prices and later extended and totaled them and that the grand total was about $1800 at cost? A. That I don't recollect, Mr. Corbin.

Q. You won't deny that, will you? A. I don't know what he might have said, if he did say anything that you say there. I wouldn't recollect that.

Q. You mean you don't recall it now? A. I don't recall it now.

Q. You won't say that it didn't occur? A. I couldn't say that either. 801

Q. Did they work on that inventory until about seven o'clock? A. Are you through with that question, Mr. Corbin?

Q. Yes. A. I couldn't tell you what time it was.

Q. And did Robert Hoffman, did you, at about that hour, question Mr. Sam Rich as to the value of the stock and as to what he would pay for it? A. I don't remember asking anybody there as to what they would pay for any of the stock in that store.

Q. Did you ask Sam Rich what he regarded the true value of that stock to be? A. I don't think I did.

802 Q. You were interested in knowing that? A. If he were in that business, I don't know whether he was in the business that you tell me he was in, if he were in that business and I knew that fact, I may have asked what the value of the stock was. I would be interested in knowing what the approximate assets were.

Q. And Sam Rich then and there showed you that the total of these figures of the inventory, the cost of those goods was about $1800 at cost, and he further told you that he would pay between eleven and twelve hundred dollars for the stock and fixtures, because that was all it was worth. He told you that? A. I don't think he did.

803 Q. Will you deny that he said that to you? A. I would.

Q. You will? A. I mean my best recollection is that he did not.

Q. Will you deny that he said that in words or substance? A. I tell you my best recollection is no such statement was ever made at that time or at any other time.

Q. That is your best recollection; but are you positive about it? A. That is the best answer I can give.

Q. So you won't deny that occurred? A. I say that is my best recollection.

Q. Then that is your best answer? A. That is my best answer.

804 Q. Now Sam Rich on that occasion said that a good part of that stock was winter stock and was worth considerably less at that time of the year, and then again some of the stock was shopworn. A. I think Mrs. Hymowitz knew something about that and if there were any questions to ask I would have addressed them to her.

Q. Not to Sam Rich? A. If he were there, and he was there, that was the first time I met him.

Q. Did you tell him that? A. I don't think I did.

Q. In words or substance? A. I don't think I did.

Q. Did he tell you that in words or substance? A. What?

Q. That it was winter stock and shopworn? A. There 805
may have been remarks passed there.

Q. By him? A. Whether by him or Mrs. Hymowitz.

Q. And that the stock was worth on sale $1200? A. I don't think any statement of that kind was made there.

Q. Were you then given the keys to the store? A. I don't think any keys were given to me until after the assignment was executed.

Q. And when you all departed from the store that evening, you also took with you the inventory and said that you would advise Sam Rich of your position as to what you were going to do about the matter, isn't that true? A. I never
did. 806

Q. What is that? A. I never did, because I had no business with Sam Rich at any time.

Q. Did you take the inventory with you? A. I may have taken records with me, that is, bills and other correspondence.

Q. The inventory I said, the inventory? A. I don't think I did.

Q. What happened to that? A. Don't ask me, I don't know.

Q. Well, you were there? A. I don't know whether there was an inventory made.

Q. You mean to say sitting there, Mr. Hoffman, that that 807
night you went down there you got the inventory, and they had been working on it all day and finished it while you were there? A. I answered that. I say I took no inventory that was prepared by Mr. Rich along with me.

Q. What inventory prepared by whom did you take with you? A. I don't recollect taking a copy of any inventory with me at that time.

Q. Will you say you didn't? A. That is my best recollection.

Q. That is as strong as you dare to put that? A. Not as strong as I dare to put anything.

808 Q. Now what were the papers that you did take with you? A. My best recollection is that I took with me bills, correspondence, records; I cannot tell you exactly what. I think there was a box that had a lot of bills and records in there; I think I took them.

Q. There were two files, one a file of unpaid and another of paid bills. A. It may be.

Q. And that is all the books and records Hymowitz kept? A. He kept no regular set of books, that is a fact.

Q. And from that you all made up your minds and came to a final conclusion as to what the stock was worth that night; didn't you? A. The answer is "No."

809 Q. And the fact is you all agreed that the cost value was around $1800 and the real value or sale value was around $1100 or $1200, isn't that right? A. No.

Q. Now did you figure up what the bills were? A. What?

Q. The unpaid bills? A. When?

Mr. Schachner: Will you offer the paper you have been reading from for identification.

Mr. Corbin: I will offer in evidence the paper I have been reading from.

Mr. Walsh: All you could do is to have it marked for identification. You know that.

810 Mr. Corbin: Is there any objection?

Mr. Schachner: No objection to having it marked for identification.

Mr. Corbin: I have offered it in evidence.

Mr. Schachner: I object to its admission in evidence.

The Court: Objection sustained. Mark it for identification.

(Marked Defendants' Exhibit A for identification.)

Q. Did you figure up the bills to find out how much Hymowitz owed? A. When was this?

Q. Before the 24th of March? A. I don't think so—oh, yes, it may have been at the time I visited him at Riker's Island, he may have figured them up for me or with me, that is most likely. 811

Q. Did you take them home with you that night you got the assignment? A. I think I did.

Q. Did you figure up the bills? A. At that time?

Q. At some time prior to March 24th? A. I would say that the bills or the approximate liabilities were figured up at that time.

Q. And did you find that they totaled something over $2500? A. Approximately $2500.

Q. Approximately $2700 something over $2500? A. Around that figure. 812

Q. And then there was a claim of the City for $1000 that you knew was in the offing? A. No, sir, the first time we knew about any City claim was after Goldman, Malter & Goldman were retained as co-attorneys. As a matter of fact, the notices were served on them and I think they called it to my attention, if I am not mistaken.

Q. The creditors, outside of the family, their claims were around $2500? A. Around that figure.

Q. Did you on the other side figure up the cost of the stock? A. I think Hymowitz put a figure of between $2200 to $2500 on it. 813

Q. At cost? A. At cost, something around that figure.

Q. Now was it true that it was not seasonable to sell that stock at that time and that they had some difficulty in running the store for that reason? A. I don't know—you mean with respect to Hymowitz's business prior to the 24th of March?

Q. It was not a good time to sell the stock, was it? A. You mean any occasion or you mean in March of 1937?

Q. Yes, if was not a good time of the year to sell it? A. You mean in March, 1937?

814 Q. Yes. I am talking about March, 1937. A. Well, I could not say. I didn't know much about it.

Q. You didn't say anything about that in your letter to the creditors? A. As to what?

Q. About the seasonable character. A. I may have stated something in my letter with respect to the seasonableness of the stock, as one of the reasons, perhaps why Hymowitz was in such a position, that I may have stated it. There may have been mention made in the letter about seasonableness.

Q. That was a ten-year old stock on the Bowery? A. What do you mean?

815 Q. They had been running the store for ten years? A. They had been running a store for twenty years, that kind of business.

Q. There was stuff in there that was as much as ten years old? A. Not to that extent.

Q. You were not told that? A. Not that it was ten years old.

Q. Did you ever have any experience at all personally with this kind of stuff? A. You mean buying and selling?

Q. Yes. A. No.

Q. At least you were told and understood at the time that whereas the stock might have a cost value, as you
816 stated in your letter, of around $2500— A. (Interrupting) About $2500, $2200 or $2700, around that figure.

Q. That it would not bring half that on the sale? A. That is not so.

Q. From 40 to 60 percent, tops? A. You mean told that by anybody?

Q. Yes. A. I was told by Mr. Dunn that it was worth around $2000 on a sale, and Mr. Wishbow said it was worth around $1800 on a sale; I was told that.

Q. And you believed it? A. I had no reason to disbelieve it.

Q. Is it not the fact that you didn't think that stock would bring more than $1100 or $1200? A. At which time do you mean, in March, still in March? Which part of it? You mean the 24th of March, prior or after? 817

Q. Well, never mind. You had no idea that the creditors were going to get any hundred percent for their claims on this estate, did you, at any time? A. Not to the extent of 100 percent, no.

Q. You had no idea that the estate would amount to on a forced sale that you were noticing to more than $1500, did you? A. Well, I thought the stock would realize about between $1800 and $2000.

Q. Suppose we say $2000. You knew the expenses would run high before the creditors got anything, didn't you, in assignment proceedings? A. Well, the usual expenses. 818

Q. Your auctioneer, those expenses ran to around $300, with helpers? A. Well, there was a reason why it ran to $300. Do you want the reason for that? That is not a usual expense.

Mr. Schachner: I respectfully suggest that the witness be allowed to explain.

The Court: He can answer.

Q. Is there something you want to say? A. I thought you might want to know— 819

The Court: Well, Mr. Schachner, you can take him on redirect when the time comes.

A. (continuing) There were fees for the assignee that would total nearly a hundred, you had to think of that, that would be 5 percent, the statutory fees, that is the usual rate.

Q. And your fee, you figured on getting three or four hundred dollars out of it? A. I absolutely didn't. The Court allowed $300.

820 Q. You got it? A. You mean I eventually got it?

Q. Yes. A. Yes, sir.

Q. You got it and didn't split with anybody, did you? A. I did not.

Q. And you knew in March of 1937 that the sales tax and business tax had to be paid? A. I tell you I didn't know anything about that thousand dollar claim.

Q. There was rent to be paid, wasn't there? A. I am not sure whether the rent for March had been paid, I am not positive of that, but I do know there would not have been much rent to pay if that sale had been permitted to go on April 5th, because we got an order for the sale
821 on March 24th and consequently the sale on April 5th, and only paid to the extent of twenty-five——

Q. There would be a difference in fact between 75 and 50, that is the difference? A. There would have been a difference. In fact, the difference between twenty-five and $150, that is what the saving could have been.

Q. Well, at least you have got three, four, seven, around $800 to come off the expense, to come off the $1800 figure. A. Consisting of what?

Q. The auctioneer's fees and helpers, and I have not said anything about advertising expenses, etc., and put in your fees at what you got, $300, and your assignee fees
822 at about $100, and then you have got your rent, there was a bill of $60 for the cash register, that had to be paid. A. That was because the assignee sold the cash register and got more than $60 for it, I think, and paid the $60 to the company that had a conditional bill of sale on that cash register.

Q. And there was that sales tax that you say you didn't know about, $1000 to the City; you knew from talking with Mr. Hymowitz that matter had to be adjusted? A. I didn't. He said the sales tax had been practically paid up and that he did it by putting pennies in a box on each sale.

Q. There was about $300— A. (Interrupting) Paid to 823
the City by way of sales tax, yes, sir. I adjusted the claim of $1000 down to $300-odd.

Q. That all gets it down to around $700 that there was equity for the creditors. A. You will have to give me some papers here. Have you got the final accounting? If you have I will be able to follow you much better.

Mr. Corbin: Here is a chart of figures taken from the final accounting, Judge. I don't know whether I need to identify the figures by the witness but I will show them to you.

May I mark these in evidence. Let me show you 824
what it is. I am informed that every figure here comes from exhibits in evidence.

The Witness: Might I look at it for a moment. I think there is an error.

Mr. Walsh: Do you say it is correct, Mr. Corbin?

Mr. Corbin: It is said to be correct.

Mr. Walsh: Then we have no objection.

(Chart marked Defendants' Exhibit B.)

The Court: We will now take a five-minute recess.

(Short recess.)

Mr. Corbin: Mr. Schachner reminds me, ladies 825
and gentlemen of the jury, that the word "preferred" in this last exhibit B is misspelled. It has one "f" too many, so can we eliminate that in some way?

Mr. Schachner: No objection.

The Court: Very well, gentlemen. It is a typographical error. You may proceed.

Q. You told the creditors in that letter of March 24th that they were going to get as near 100 percent as possible. You mentioned 100 percent in the letter, didn't you? A. That is what the letter says.

826 Q. Well, with the figure $1800, if you will, for the value of the stock, although the petition that was prepared at your instance said that it was worth only $1500— A. What do you mean by "at my instance?"

Q. Well, do we have to go back to that? You said you did not prepare it yesterday— A. If you want to.

Q. You swore that you prepared it but you said yesterday that you didn't. A. I said what?

Q. Have I got to go back to that? A. If you want to, Mr. Corbin.

Q. I am still coming back to these figures. A. (No response.)

827 Q. In the petition put out in your cover and which you did not know where it was prepared, but it was referred to in your affidavit that I showed you yesterday, in which you said you prepared it—you remember that? A. Yes, sir, but I explained it to you yesterday.

Q. Maybe there was an explanation but, in any event, in this petition the statement is made that the entire assets "After investigation and after your petitioner has caused to be made an examination of the entire assets were $1500." A. Who signed that petition?

Mr. Corbin: Judge, can't I have an answer?

828 The Court: Well, he is entitled to see whether he signed it or not.

Q. Well, I did not say he signed it. It is Mr. Kolman's petition. He verified it, didn't he? A. Well, that is his signature and there is his verification.

Q. Yes. It was your product, wasn't it? A. What do you mean by "my product"?

Q. It came out of your office? A. That is my back on there.

Q. It came out of your office? A. And I appeared as attorney for the assignee.

Q. And you knew that it was going to be submitted to the Court to act upon? A. I knew that application was going to be submitted to the Court for an order for sale. 829

Q. You knew that the paper was going to be taken down to the Judge and that he was going to read it and act upon what it contained, didn't you? A. And I didn't see the contents of that particular petition before it went down to the Court.

Q. You mean to say that somebody in your office put something over on you? A. No. Mr. Kolman is an attorney.

Q. Well, the fact is that by a paper that came out of your office and was used in your own back, with the Court and upon which the Court made an order at the time, stating that $1500 was the fair value of the full entire stock, didn't it? A. If the paper states that, that is what is there. 830

Q. Well, you knew it, didn't you? A. I told you I didn't.

Q. This paper was verified on March 24th, the very day that you were handling this matter by getting out the letter to creditors; isn't that right? A. The 24th of March, that was the same day.

Q. In fact, the very day that you were retained? A. Yes.

Q. This paper was signed? A. Yes, sir.

Q. Do you want this jury to believe now from what you say that you did not know anything about a $1500 valuation? A. I want the jury to believe that I didn't prepare that, that Mr. Kolman prepared that, and that I didn't see it before it went down to court. 831

Q. Well, all right. It came back from court, didn't it, with the Judge's signature? A. I think the original remains in court. I think a copy is made of it, if I am not mistaken.

Q. It had the Judge's signature on it, didn't it? A. I say, I think the original remains on file and we got a copy of the original for our files.

Q. Then you knew from the copy what the original said.

832 didn't you? A. I may not have examined it after it came back.

Q. Oh, now listen! A. All I was interested—

Q. You knew that $1500 was the value put by your office on that stock at that time, didn't you? A. If the order said a bond of $1500 that would imply that that was the value or some value like that stated in the petition, for the fixing of the bond.

Q. Is it impossible for you to tell me whether you knew at or about the time of this petition and whether that Mr. Kolman, your client, had sworn that the value was $1500? A. Kolman was my associate. He was the assignee.

833 Q. He wasn't your client? A. Well, client in a technical sense, yes.

Q. Now will you answer my question? A. All I can tell you is this, that before it was filed I didn't see it. After the order was signed and a copy of it came back to the office, most likely I did see the order.

Q. How about the petition that was annexed to it? A. I may not have looked at the petition, Mr. Corbin.

Q. You think you are going to get away with that, do you? A. I am not trying to get away with anything, Mr. Corbin.

834 Q. Well, $1500 we can take on the basis of something that came out of your office and was acted upon by the Court, can't we? A. You can take what you want.

Q. Aren't you willing to stand by your own office papers? A. I am willing to stand by what the law is, and there was a bond fixed at $1500.

Q. And that was $1500. A. That is what the Court fixed and that is only provisional. It may be amended by a permanent bond in a larger amount. If those facts are shown to the Court the Court will direct the enlargement of the bond.

Q. No, but the fact is that it was never enlarged, was it?

A. If the record shows it was never enlarged then that bond was not enlarged. 835

Q. And the fact is that the amount of $1500 was fixed upon a statement that came out of your client's affidavit or petition? A. You have the paper there.

Q. Well, that is right, isn't it? A. That is what the paper says.

Q. Why are you so unwilling to answer directly my question? A. Well, you keep repeating it. I mean that as a fact. We had this here yesterday.

Q. I can't get a direct answer from you. $1500 we will take as the value. Out of that how much did you expect the expense would be? I am talking about March, 1937. 836
A. Well, I didn't figure any fifteen—

Mr. Schachner: I object.

The Witness: Excuse me.

Mr. Schachner: Your Honor, I object to this question. Mr. Corbin has no right to take the value of $1500 without some support in the record.

The Court: I will overrule your objection.

Q. Now I will just ask one question: how much did you estimate the expense would be? A. Well, let us see. I figured that the rent would be about—could I have a sheet of paper so I can follow through. 837

(Paper handed to the witness by Mr. Corbin.)

Mr. Schachner: Do you need this final account?

The Witness: If you have the final account that will help the situation.

Mr. Schachner: May the witness use it (handing to witness).

(Witness examines document.)

Q. Give us the items as you put them down. A. Rent.
Q. Rent; how much? A. I would figure about $50 tops.

838 Q. Well, what is the next item? A. I am figuring the auctioneer's expenses. The auctioneer's expense is approximately $125 for conducting the sale, plus the disbursements for advertising and labor.

Q. Well, how much were those additional expenses for labor? A. You mean as they appear in here or as finally figured?

Q. No, as you probably figured them.

The Court: The question was, what did you estimate the expenses to be in March, 1937?

Mr. Corbin: Yes.

839 The Witness: Well, that is what I am trying to figure approximately.

Q. What do you figure those to be about? A. Which?

Q. The additional expenses, auctioneer expense? A. Well, I am going into that now. I have no definite recollection now. I am trying to work back from this.

Q. All right, work it out. A. I figure auctioneer's expense, including advertising, at about $200.

Q. All right. What else? A. I figure assignee's expense about one hundred.

Q. Assignee, one hundred. A. Approximately one hundred. I figure the attorney's fees between $150 and $200.

840 Q. That means you? A. That means the attorney for the assignee, me.

Q. Could I put two hundred down here on my list? A. If you like it better you can put two hundred.

Q. It is fifty better than 150. All right. A. Let us see. That is approximately all, about 550.

Q. 550. Well, if I took your smaller figure of 150, your own figure, although you got twice that— A. I will take 200 if you want to; I don't care.

Q. No. If we take 150 and write that down, it is a

total of 500, isn't it, of expense? A. Approximately 5— 841
550.

Q. And 500 or 550 from 1500 leaves $1000. A. Where do you get your figure—I mean, why do you take 500 off of 1500?

Q. Well, I have your paper here. A. No, you haven't got my paper here. You figure—

The Court: Very well. Proceed with the question, Mr. Corbin.

Q. Now from that $1000 you had how much of bills to pay? A. Well, you had several hundred dollars more for 842
your relief outfit, Mr. Corbin.

Q. Well, they came to $200, didn't they? A. Well, at that time it figured around $300.

Q. Oh, I see. A. As a matter of fact, I think, the letter stated at that time that it looked like $450.

Q. I know what the letter said. A. Well, it said about $250 and then it said there was about another two hundred or so in dispute with the City.

Q. Well, I know. We will say about 300. That is the way you figured it at the time. A. No. I figured it about four or 450. Is that what the letter says?

Q. Your letter is claiming something different from what 843
the fact was and what you believed. You in your own mind figured about $300 for the relief tickets as an outside figure. A. You are asking me now what I thought about this matter on March 24th?

Q. That is right. A. Now, I sent that letter out at the time and you have that present.

Q. I am going to take that letter up with you, but I am getting the figures first. Now $300, if you add that to the $1000, makes $1300. A. I think you could add 450 there, Mr. Corbin.

Q. Well, if you add 450— A. Instead of 300.

844 Q. If you add 450, although you only got 200— A. That is true. The City resisted the claim for about 200 or 250.

Q. If you make it $1450, that is tops, isn't it, and then— A. No, no, it isn't tops, Mr. Corbin. Let me answer that question.

Q. And then you have $1450 to pay $2700— A. Do you want me to answer the first question?

Q. No. You had creditors' bills of $27[illegible], didn't you? A. Is that what the account says?

Q. That is right. A. And is that what the letter says?

Q. The letter says "Approximately $2500." A. Well, that was the basis that I figured at that time.

845 Q. All right. $1400 to pay $2500. A. Oh, no, it wasn't $1400 at that time. That was figured—

Q. What is that? A. We didn't figure $1400 at that time.

Q. Listen. You were talking to the creditors in that letter about 100 percent. A. I said as close to 100 percent.

Q. How much did they get, what percent? A. Eventually?

Q. Yes. A. About—between 16 and 17 percent.

Q. Yes, and you ran the show, didn't you? A. Oh, no.

Q. Through your assignment proceeding. A. Oh, no, I

846 didn't run the show. The defendants ran the show with me.

Q. And the FBI. A. That is absolutely correct.

Q. And you sold the stuff out and collected—the auctioneer sold the stuff out and you collected everything— A. The assignee collected what was supposed to be paid.

Q. All right, your client, the assignee collected it and when you got through you had 17 percent for the creditors, whereas these lawyers had been talking to you and the creditors had been talking to you on March 25 about a 40 percent net to the creditors by way of a settlement, hadn't they? A. Why, if they hadn't stuck their

face in the picture you wouldn't have had a small figure like that. 847

Q. If they hadn't stuck their face in the picture you wouldn't have had 17 percent for the creditors and you know it, don't you? A. Of course I don't.

Q. And that is the result of your assignment proceeding, isn't it? A. That is the result of their actions.

Q. Although on March 25 you told the creditors in that letter that you were going to give them pretty close to 100 percent. A. Whatever that letter says I felt at that time.

Q. And you knew when you wrote the letter that there wasn't a Chinaman's chance of getting anything like that, was there? A. There was no Chinaman's chance of getting 100 percent. 848

Q. And the reason that you mentioned 100 percent in the letter was so that the creditors would say, "Well, here is an estate of $3000 or more of value." You said that in that letter, you mentioned $3000, do you remember? A. Well, is that what the letter says?

Q. $2500— A. How much?

Mr. Schachner: Why don't you quote from it?

Q. You mention in that letter from $2700 to $3000 of assets, don't you? 849

Mr. Schachner: Your Honor, I object to this question. If Mr. Corbin wants to quote from the letter let him do so, but he cannot substitute anything—

The Court: I sustain the objection. He is entitled to see the letter.

Q. I will read from Exhibit 5-A:

"Accordingly then the assets would appear to be about $2700 to $3000."

850 You wrote that, didn't you? A. At that time it appeared to be to me.

Q. Yes, "And the liabilities approximate about $2500." A. That is what they appeared to me at that time.

Q. And that was the picture you were giving the creditors? A. That is the picture I had at that time.

Q. Although you knew at that time that they didn't have a chance of getting anywhere near 100 percent, didn't you? A. No, I said that there wasn't any chance that they would get 100 percent.

Q. Although you were— , A. I tried to get them every cent that was in the estate.

851 Q. And you were doing that in order that they wouldn't interfere with your little show of administering the estate through the assignment? A. That isn't so, Mr. Corbin, because I asked cooperation of Goldman's office and Schulman's office, to examine into the records and help as counsel as they wanted, and if they had any suggestions I would be glad to follow them out.

Q. You wanted these lawyers to help you, didn't you? A. No, to cooperate.

Q. But not to participate? A. In what?

Q. Cash; fees. A. There was no necessity.

852 Q. You wanted their help but you wanted to keep the money for yourself, is that it? A. No. They represented creditors and they were being paid by their creditors, I assumed, if they did represent creditors.

Q. Now you testified before in connection with this matter, haven't you? A. What do you mean? In court?

Q. Yes. You were before the grand jury, weren't you? A. Oh, yes, sir.

Q. When? A. The early part of this year.

Q. And before that? A. About a year or so ago—two years ago. I don't know.

Q. At that time the matter was in charge of a Mr.

Spector, not Mr. Schachner; a Mr. Spector who was the assistant? A. Mr. Spector, I understand, was first in charge of that case. 853

Q. That was in 1938, wasn't it? A. I think that is correct.

Q. And that is when you testified before the first grand jury? A. That is the first time I testified before the grand jury.

Q. Yes, and then in this present year, in 1940 you testified before another grand jury, didn't you? A. That is correct.

Q. And that was Mr. Schachner, when he came into the matter? A. That is correct. 854

Q. Well, after April—let us see: the hearing before Judge Coxe was what, April 5th or 5th? A. I think it was the 5th.

Q. The 5th. Did you when you were before Judge Coxe in the Federal Court here tell him anything about what you told his jury, about what you say Morton Goldman told you on the 25th of March? A. I did.

Q. You did? A. I absolutely did.

Q. And he told you to go out and settle it up?

Mr. Schachner: Your Honor, I object to this question because the question before Judge Coxe at that time— 855

The Court: I will sustain the objection to this question. I will say this, gentlemen: That if you want a predicate to impeach the witness, in other words, if he testified differently before Judge Coxe from what he is testifying here, that would be permissible and admissible, but I do not understand this question to purport to intend that, so for that reason I sustain the objection.

Mr. Corbin: Yes.

Q. What was it that Judge Coxe said to you when you left?

856 Mr. Schachner: Your Honor, I repeat my objection.

The Court: I will sustain the objection as to what Judge Coxe said.

Mr. Corbin: I am only asking, Judge, about something that was testified to on direct.

The Court: Well, what Judge Coxe said was immaterial, so I will sustain the objection.

Q. On your direct examination—I am referring to page 89—you said, did you not: "Judge Coxe said that Schulman and I should try to get together and straighten this
857 thing out."

Right? A. Right.

Q. And denied your application? A. He did.

Q. Now will you tell us what you said to Judge Coxe of this court on that occasion with reference I mean, of course, to Morton Goldman's conversation? A. I told him in substance that we had had this meeting over at the Dry Goods Association, that Morton Goldman of the firm of Goldman, Maltef & Goldman had made a proposition to me in the presence of Mr. Wishbaw to the effect that he wanted to get a private buyer for the stock in question and that they wanted to split a certain amount of money which they
858 would get from this private buyer amongst Goldman, Kandell and myself and the auctioneer, and the like. I also told him that they had tried to—they told me they were going to try to arrange for a settlement of 40 per cent for creditors and that the difference between the amount that would be required to straighten out that 40 per cent settlement plus some additional moneys for administration fees, and the amount that they would actually get from this private buyer would be split amongst these parties and that the true amount of the sale would not be disclosed to the creditors.

Q. You told Judge Coxe all this? A. I did, and I told 859
that to him in the presence of Mr. Wishbaw, Mr. Kolman, I think Mr. Dunn was there, Mr. Schulman, the three creditors and I.

Q. And he said, "Go out and straighten this thing out"? A. No. He asked the creditors what they thought of the matter.

Q. And he paid no further attention to your charges against Goldman? A. Schulman said that he had nothing to do with Goldman, Malter & Goldman.

Q. Schulman said that? A. Schulman said that he wasn't concerned in any argument between Goldman and myself.

Q. That is all right, but you knew when you told Judge 860
Coxe what you say you told him, that Judge Coxe would be intensely interested in any such conduct on the part of an attorney, didn't you?

Mr. Schachner: Your Honor, I object to that.

The Court: I sustain the objection.

Q. And you say after you had revealed, as you say, to Judge Coxe of this court what you have just recounted here, he said what?

Mr. Schachner: Your Honor, I object to this question on the ground that it is wholly immaterial. 861

The Court: It was gone into on direct examination. I will overrule the objection.

A. He said, "You men get together and straighten this thing out."

Q. And it did not concern him? A. Pardon?

Q. It did not concern Judge Coxe so far as Morton Goldman doing anything wrong as a lawyer? A. It may have—

The Court: Just a moment. I will sustain the objection.

862 The Witness: Oh. I saw no objection, that is why.

Q. You were pretty angry that day, weren't you, at Morton Goldman? A. I was fit to be tied.

Q. So you ran to the FBI? A. I didn't run to the FBI.

Q. All right. From that time on—oh, what were you so fit to be tied about, by the way? A. I was astounded the way that lawyers in this city would conduct themselves so that they were nothing more or less than racketeers. Here was a situation where an assignment for the benefit of creditors was filed. The prime intention was to distribute
863 whatever assets there were in the estate to creditors. Along come an attorney and some member of an association and they say in effect, "You either cut us in on this or we are going to put you into bankruptcy," that is, the estate.

Mr. Mintzer: I object to this statement, what they said in effect. Let him say what they said.

Mr. Walsh: No. That is responsive, if your Honor pleases.

The Court: I will sustain the objection—

Who do you represent?

Mr. Mintzer: I represent Mr. Kandell.

864 The Court: I will sustain the objection as far as Mr. Kandell is concerned. I think the answer is responsive to the question as counsel for the defendants has put it.

Mr. Corbin: I called for the speech.

Mr. Walsh: And I think he ought to be allowed to continue his explanation.

The Court: I will allow it.

Q. Go ahead. A. I was astounded at the way they worked this. In other words, one group of lawyers would come up and say that they would want to be made the co-attorney

and the co-assignees, and then they would slide out of the 865
picture in a way, and have another attorney file a petition in bankruptcy and make it appear as if one had nothing to do with the other.

Q. And why— A. And furthermore, I was also astounded at the fact that attorneys in this city would enter into deals to sell out their own clients because if they represented creditors in that picture and they were going to make deals with private buyers and split undisclosed amounts, why, that was putting in money into their own pockets and cheating their own clients, and that's why I was fit to be tied.

Q. What office are you running for? A. I am running 866
for no office—

Mr. Walsh: I object to that.

The Witness: Mr. Corbin, and you would have felt the same as I did at that time.

Mr. Walsh: I object to that.

The Court: Just a minute. There is an objection. I sustain the objection.

Q. Of what committee of the Bar Association are you a member of? A. None. I am only a member of the New York County Association. 867

Mr. Walsh: I object to that.

The Court: I will overrule the objection.

Mr. Walsh: May I call your Honor's attention, or will your Honor take judicial notice of the canons of ethics that lawyers are supposed to know that if they find a situation such as this described from the witness stand, that he is under a duty as a lawyer and an officer of the court to let the FBI know. Will you take judicial notice of that?

The Court: The question was: What association of lawyers does he belong to. I think that is a

868 competent question. I will overrule the objection.

The Witness: New York County Lawyers Association.

Q. And do you claim to be somewhat of a politician too? Don't you? A. I don't claim anything, Mr. Corbin.

Q. When Mr. Morton Goldman made, as you say, this proposition to you out in the hall on the 25th of March, you told us on direct examination that you left it with him—"Well, I will see what I can do"? A. I said I will think it over.

Q. Did you mean that? A. Pardon?

869 Q. Did you mean that? A. Of course I meant that. I would think it over and keep away from him, and possibly they get some sense in their heads and leave me alone.

Q. Why didn't you say to him, "I won't stand for anything of that kind"? Why did you tell him, "I will think it over"? A. Because if I told him that thing, they would have filed the petition practically the same day or the following day.

Q. And that would mean that your fees would not materialize? A. That means that the whole thing would be in a fine mess and jumble.

870 Q. In Federal Court? A. Yes, sir.

Q. A fine mess and jumble? A. Yes, yes.

Q. Here in this court? A. Not a mess—not on account of the fact that it was in the Federal Court, but because lawyers like that would handle it.

Q. You wanted to run it under your own office? A. Yes, with their cooperation.

Q. And you were fit to be tied when a prospect loomed that it might get under this roof here? A. No. I was fit to be tied at their actions.

Q. So you set out to try to get evidence on them? A. When?

Q. From April 5th on. A. No. I went over to Referee 871
Kurtz and I told him about the situation and he told me that there had been many complaints made about these same defendants and he asked me whether I wanted to tell my story to the Federal Bureau of Investigation's representative, and I said I would and he called somebody down and I told him what had happened, and from that day on I was under instructions of the FBI.

Q. Now do you feel happy in that answer? A. I don't feel happy. I would give anything in this world not to be in this courtroom testifying against another lawyer, but you know, Mr. Corbin, if you were in my place you would do the same thing. 872

Q. You think you made time when you told the jury just now that Referee Kurtz told you that he had had other complaints against these defendants? A. Why, Mr. Corbin, if you knew how many attorneys in this city had experiences with these defendants you would be surprised.

Q. Are you on the payroll in this case? A. You know I am not.

Q. You are very content now, aren't you? A. I am not content. I am very much disturbed, Mr. Corbin.

Q. You think you have stuck into the defendants and turned it around? A. I do not think that, but I think 873
you have asked for it and you have asked me to answer a question and I have answered it.

Q. And you pretend here to be a fair and impartial witness, don't you? A. I am fair and I am impartial.

Q. All right. Don't say any more. You said that Morton Goldman on that 25th of March said to you, "Well, I will take care of these little creditors. They don't amount to anything. I will throw them a $10 bill a piece." A. That is correct.

Q. And you told them that their claims didn't amount to anything? A. I don't think the total of those three claims were over $250, $300.

874 Q. Do you know that the creditors that these men represented in this case totaled almost half the total amount of claims? A. I think your last question referred to those creditors who were present in the room at the time that that meeting was held; isn't that so?

Q. Well, those creditors' claims totaled close to $1000. A. Those three in the room?

Q. Why, certainly. A. You mean Kreiselman, Ribach & Mantis; and Schwartz & Zuckerman? I don't think they totaled over $300, Mr. Corbin.

Q. So you want us to understand that Goldman—

875 Mr. Walsh: I object to that, if your Honor pleases. The final accounting which is in evidence will speak for itself, and that is the best evidence, without "understanding." If he wants to refer to it I think he should.

The Court: I will sustain the objection to this extent: That the question is just not clear as to what creditors he represented, or that counsel for the defendants had reference to in the question. I don't get it myself, what creditors he was referring to. The witness is entitled to know what particular creditors' claims amounted to a certain amount.

876 Mr. Corbin: Yes.

Q. What I meant was the creditors represented there at that meeting. A. Why, as a matter of fact, I didn't know whether they represented any creditors other than the fact that I think Mr. Kandell or Mr. Theodore Goldman, at the time when they first came up to my office on the 25th, told me that they represented Butler Bros. If that is what you mean, that plus what they had in the room would total over $1000.

Q. What is that? A. I say the claims of Butler Bros. plus those of the three creditors that I named, who were

in the room and to whom I referred as having a $10 bill 877
thrown to them—

Q. Yes? A. —would total about $1000, I think. Is that what you have in mind?

Q. Well, that was a very substantial representation out of $2500. That was 40 per cent of the creditors that you are talking about. Do you mean to say that for $1000 total claims, as Goldman said, "Well, I will throw a $10 bill to them and that will take care of them"? A. Well, I think they had a talk with Mr. Niehaus before the meeting was had in which Goldman—

Q. I did not ask you about a talk with Niehaus. I don't even know him and— A. Well, I did not think he was 878
a representative of Butler—

Q. Will you answer my question?

Mr. Schachner: May I object to this?

Mr. Corbin: I will withdraw the question.

Mr. Mintzer: Just a minute, Mr. Corbin. He said, "I do not think they represented"—

The Witness: No. I said I don't think Goldman represented Butler Bros.

The Court: So far as the defendant Kandell is concerned, I will sustain the objection.

879

Q. At that time there never had been any claim anywhere that my client Goldman represented Butler Bros.—was there? A. There was a—Mr. Kandell and Goldman came up to my office on the noon of March 25th. They said they represented Butler Bros.

Q. Goldman did not say anything about that? A. I can't tell you which one said it at that time, that they represented Butler Bros.

Mr. Corbin: Did Kandell represent them?

Mr. Mintzer: Yes.

Mr. Corbin: Kandell represented Butler Bros.

880 Q. All right. But what I am getting at, this story about throwing a $10 bill in order to cover up this fraudulent proposition that Goldman was making to you, as you say, do you mean to say here that he told you that he could satisfy those creditors with a $10 bill a piece? A. Mr. Corbin, if you saw them I think that they could be satisfied for less.

Q. So that appealed to you as all right? A. It appealed to me as being rotten.

Q. It appealed to you as being something that Goldman could do with the creditors, eh? A. From what—

881 Mr. Schachner: Your Honor, I object to this question. Will Mr. Corbin please make it perfectly plain which creditors he means, those who were present in person or those represented by the defendants.

The Court: I will sustain the objection to that question.

Q. Did you make an arrangement on the 25th of March to let the creditors in the store so that they could examine it and find a purchaser for the stock? A. On the 25th of March?

382 Q. Yes. A. I think on the 25th of March the—

Q. Can you say yes or no to that? A. Let me explain. My Kolman was down in the store and the auctioneer's men were lotting the stuff off so that if anybody walked in they could see the merchandise, but I made no arrangement with anybody on March 25th to see it on that date.

Q. Now in this indictment the charge is made that the deal was this: The stock was to be sold for $1900 whereas the creditors were to be told that it was sold for $1500 so that—

Mr. Corbin: What is the waying to the witness?

Mr. Schachner: So that he doesn't answer your question, Mr. Corbin. 883

Mr. Corbin: It is difficult for me to understand this continental finesse.

The Court: That is a direction to the witness that he desired to make an objection as soon as the question was finished.

Mr. Corbin: I see.

The Court: That is what I took his motion for.

Mr. Corbin: You just nonplussed me.

The Court: Very well, gentlemen. I believe we will take a recess now to 2:15. This case will be recessed to 2:15. 884

(Recess to 2:15 P. M.)

AFTERNOON SESSION.

ROBERT HOFFMAN, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. Mr. Hoffman, if bankruptcy proceedings had been resorted to, to handle this estate, the Court would have appointed some impartial person to administer the assets, 885 is that right? A. They usually have a receiver and a trustee—there would be two, I think.

Q. Not necessarily. A. Well, my understanding of it is this: That if a petition in bankruptcy had been filed the Court, on application of one of the interested parties, would have appointed a receiver, and then after a meeting of creditors a trustee would have been elected. I think that is the procedure.

Q. There was no business to continue, was there? A. No, sir.

Q. All that it would need would be a receiver? A. To

886 take care of the assets immediately before a meeting of the creditors.

Q. Maybe a custodian? A. I think the usual procedure is to have a receiver appointed on the application of the parties to preserve the assets until there is a meeting of the creditors.

Q. By way of bankruptcy there would have been some impartial person appointed by the Court? A. That is the case.

Q. As distinguished from an employee of yours, selected by you? A. Well, if you want to make that distinction, that is so.

887 Q. Let me make one other distinction: If bankruptcy had been resorted to your client Hymowitz would have gotten a complete discharge of his debts, would he not? A. That would follow. When you say "my client," you mean the assignor. I do not want to keep on going back, Mr. Corbin. I tried to explain before the difference there with respect to Hymowitz.

Q. Hymowitz in bankruptcy would have gotten a complete discharge of his debts? A. That is correct.

Q. Never would have had to pay anybody? A. That is correct.

888 Q. In the procedure that you adopted, the assignment proceeding, he could not possibly get a discharge of his debts, could he? A. No, he would be liable to creditors for the difference between the amount of the dividend which the creditors would receive in the assignment and the amount of the debts.

Q. Now one other matter: If bankruptcy had been resorted to, if the petition had gone through and the proceedings had not been dismissed—I am referring to bankruptcy now. A. Yes, sir.

Q. You knew you could not reasonably expect as much, by way of fees, as you did expect in the assignment pro-

ceedings, is that right, yes or no? A. I think the assignee on application to the Federal Court would have received the full amount. 889

Q. Please, Mr. Hoffman. My question is understandable, isn't it? A. I would say yes, sir.

Q. That is, you knew a filing of a petition in bankruptcy would result in cutting your fees that you expected to get in the assignment proceedings? A. Because there would be less work done. In other words, my work would cease from the time the receiver was appointed.

Q. You would not have had any standing in the bankruptcy? A. You are absolutely correct.

Q. You didn't represent any creditor? A. But I am entitled on application to the court in bankruptcy proceedings to a fee. 890

Q. For representing whom? A. Representing the assignee and preserving the assets of the estate for the bankrupt's creditors. That I think is the usual procedure.

Q. You would not get 10 cents on the dollar to what you expected in the bankruptcy proceeding? A. I think I would get more than 10 cents on the dollar, much more.

Q. Can we at least agree on this: There was a bright prospect of your fees being cut considerably? A. When you say "fees being cut considerably," we cannot tell, Mr. Corbin, what amount the Court will allow in the assignment proceedings. It is up to the judge who makes or grants the allowance. 891

Q. It is not a question of possibly getting what you might realize out of the matter that caused you even impartially to get so angry about the filing of the petition? A. That fact in itself, absolutely not.

Q. That didn't enter into it, one particle? A. No, sir.

Q. You saw Morton Goldman on the course of the entire assignment proceedings on two occasions, is that right? A. I saw him—

892 Q. Cannot you say yes or no to that? A. Will you let me think about it.

Q. Think to yourself, not out loud. You saw him on March 25th? A. Right.

Q. Never had seen him before? A. I don't think I did.

Q. You saw him on April 7th, didn't you? A. Right.

Q. And never saw him after that in the course of the proceedings? A. Wrong.

Q. When after that did you see him? A. I think in the middle or latter part of May, 1937.

Q. Where? A. At his office.

Q. Did you have any conversation with him? A. No,
893 he walked through the—

Q. That is the answer. So on two occasions did you talk with him? A. That is correct.

Q. On the first occasion, March 25th, he, together with the others present, were advocating—I will put it that way—40 per cent net dividend to creditors in order to settle this thing up, by way of a private sale? A. What do you mean by "advocating"?

Q. Suggesting, asking to bring in a substitution, and if that could not be done, try to persuade you to enter into such arrangement. A. They attempted to persuade
894 me to enter into an arrangement whereby the creditors would get 40 per cent at that time, that is correct.

Q. The plan was, their plan was to avoid auctioneering expenses and other expenses by having a private sale called a bulk sale; that is right, isn't it? A. That was part of their plan, with the exception that the auctioneer had already incurred some expense.

Q. All right. That plan of selling out and giving creditors a net 40 percent was not agreeable to you, was it? A. Not in the manner in which it was proposed.

Q. You say that there was, outside in the hall, an improper proposal put up to you by Morton Goldman? A. Yes, sir.

Q. Which you said you would think over? A. Yes, sir. 895

Q. And nothing else occurred so far as Goldman was concerned after that until you heard that a petition in bankruptcy had been filed, is that correct? A. That is correct.

Q. So you want the jury to understand that without any further communication to him, you having told him you would think over this illegal proposal, you went ahead and filed a petition in bankruptcy? A. No—

Q. Well, Schulman did? A. Schulman filed the petition in bankruptcy.

Q. Without asking you what you had decided to do about it? A. I don't think Schulman communicated with me. 896

Q. I say Goldman didn't communicate with you in the meantime, asking you what you had decided? A. Why, Phillip Cohen on the Dry Goods Association called and asked me to call Goldman—

The Court: You are not to consider that answer. The question was with reference to Goldman, whether he communicated with you or not.

The Witness: He did not, sir.

Q. In the indictment, and in the opening of Government's counsel, a figure of $1900 has been mentioned as representing a figure of $400 more than the actual figure of the sale. That is, the kickback was from $1500 up to $1900. 897

Mr. Corbin: That is only preliminary, Judge.

Q. (Continued) Was there any talk that you heard at any time to anybody about a $19000 figure at which the stock was to be sold? A. No, sir.

Q. Did you ever hear of anybody in the City of New York or elsewhere who ever offered $1900 for that stock? A. No, sir.

898 Q. What was the figure, if you can tell us, that you claim was to be split up among you lawyers, according to your talks with Schulman? A. Well, there was a difference of $400 between the $1200 that was to be reported to creditors and the $1600 that Schulman said he could get from his private buyer, and then there was—

Q. Doesn't that answer it? A. No. You asked me what sum was to be split up.

Q. Between what figures, and you have given us that. A. You have got those vouchers. There was money coming of the City from vouchers.

899 Q. That was to be split up? A. Part of that was to be added to the $1200, and then from the difference between the amount that would be required to pay the 40 per cent to creditors, which was computed at that time to be about $1000, and then they had this sum of 12 plus 3, about $1500, and then part of that $500 was to be used for disbursements and administration expenses, and then anything that was left by way of a fee there, to which I would be entitled, would be added to the $400 and that entire amount split the three ways I told you about.

Q. When you say "they", you mean Schulman, because these talks were with Schulman? A. Yes, sir. The talks with Schulman—

900 Q. That answers it. A. And some talk with Teddy Goldman.

Q. You told about that on direct examination, whatever talk you had with him then? A. No, I don't think I testified about that last statement on direct examination.

Q. The talk that you had in which this split up that you are mentioning was discussed— A. That was with Schulman.

Q. Was that with Schulman? A. Yes.

Q. And Morton Goldman wasn't there? A. No, sir.

Q. And Theodore Goldman wasn't there? A. No, sir.

except that that conversation, the latter part of May, 1937— 901

Q. Well, was Schulman present at that? A. Schulman was present.

Q. When was that? A. I should judge that was in the latter part of May, 1937. That was at the time that—I think an application had been made by Endicott Johnson to remove the assignee and that was subsequent to the dismissal of the petition in bankruptcy.

Q. Well, Teddy Goldman, the younger man was preparing papers in connection with those proceedings and the settlement that had been arranged, is that right? A. He was to prepare those papers.

Q. He was the draftsman of those papers? A. Yes, I 902 imagine he was the one to take care of the papers.

Q. Did this talk about split up and the four hundred plus something, was that with Schulman in the absence of both Teddy Goldman and Morton Goldman and in the absence also of Kandell? A. That is correct.

Q. And you say that your talk with Schulman was in effect that that was to be split three ways, that approximate figure of $400? A. Yes.

Q. And that one-third of it was to go to, as you put it, the Goldman outfit, that is, his firm, you mean? A. Yes.

Q. Out of which you say they were to pay Kandell? A. 903 Take care of Kandell.

Q. Then one-third of 400 would be 133, and that split would be $66 or $67 to the Goldman outfit—. A. No.

Q. (Continuing) —composed of three partners getting about $20 each, is that it? A. No, it is even less than that.

Q. Less than that. A. Because they had the 400 divided three ways, that is, 125 and then Schulman suggested the additional 25 go over to Kolman. I mean that was part of the general discussion that took place at several of the meetings.

904 Q. So on the theory that you are advancing, from your talks with Schulman Mr. Goldman stood to get about $20 out of the fraud that you say he committed?

Mr. Walsh: I object to the theory and I object to the form of the question. It isn't a theory. It is what he testified actually happened.

The Court: I sustain the objection.

Mr. Corbin: Yes. I guess it is summarizing.

Q. All right. Now the next time you met Morton Goldman was on April 7th? A. That is right.

905 Q. And that was in Schulman's office? A. Right.

Q. Did Morton Goldman say anything wrong there? A. No. He was—

Q. O. K.? A. —pretty well het up about the fact that I had made certain statements to Judge Coxe and he said those statements I made to Judge Coxe weren't true and I reiterated the fact that what I said to Judge Coxe actually took place, and otherwise—

Q. So you were disputing with each other on April 7th as to what the truth of the March 25th talk had been? A. No, what the talk on April 5th had been.

Q. Well, on April 5th you recounted to Judge Coxe you 906 said what occurred on March 25th? A. Yes.

Q. And on April 7th Goldman told you that it was a damned lie, didn't he? A. Yes.

Q. And at that time you were in cahoots with the FBI?

Mr. Walsh: I object to the characterization of "cahoots."

The Court: Yes, I will sustain the objection.

Q. I mean, you were there on that occasion, on April 7th when this talk was had, cooperating with the FBI and in the knowledge that they had a dictaphone on the

other side of the wall listening to the conversation, didn't you? A. I was there under instructions of the FBI. 907

Q. Yes, and you didn't tell Morton Goldman that, did you? A. No, sir.

Q. In fact, you got him to come over there, didn't you, pursuant to an understanding that you had with the FBI that you would ask him to come over there? A. No. Schulman asked him to come over.

Q. But you got Schulman to ask him over because you wanted to have the conversation recorded? A. I arranged the appointment with Schulman.

Q. You went over to Schulman's office? A. Yes, sir.

Q. And when you got there you put in a call for Morton Goldman to come over? A. I didn't put in a call for Morton Goldman. 908

Q. You got Schulman to do it? A. No, Schulman did it.

Q. You knowing that the agents, the government agents were on the other side of the wall listening in? A. Yes, sir.

Q. Now Morton Goldman did not suspect for a minute that there was any set-up like that in that room or in that wall so far as you know, did he?

Mr. Walsh: I object to the form of that question. It calls for a conclusion what Goldman suspected, as he cannot answer. 909

The Court: He says, "So far as you know." I will let him answer.

Mr. Walsh: I am sorry. I didn't hear that.

A. I don't know what Mr. Goldman suspected.

Q. I will put it this way: you supposed, as you were in that room, that the talk was being recorded: right? A. What do you mean by "being recorded"?

Q. By a device, a listening device which amplified the sound in the next room? A. I don't know just what apparatus they had there.

910 Q. I don't care. You knew that the government agents were on the other side of the wall taking down the conversation that occurred in Schulman's office, didn't you? A. I understood that they were listening in.

Q. Well, that is why you went over there. A. (No response.)

Q. You knew they had wired his office before you went, didn't you? A. I knew they intended to listen in on the conversation.

Q. Intended to? You knew that before you went over on the job. A. No. I knew that an appointment had been arranged.

911 Q. You went over there, having gone there with the knowledge of the FBI? A. Let us put it this way: I expected them to be there at that time.

Q. Well, hadn't you told them you were going over at that time? A. I certainly did.

Q. So your understood when you went over there that they were set to take the talk? A. I had that idea.

Q. All right. Now from anything that occurred in the room, that is in Schulman's room, during that conversation while Goldman was there, was there anything that happened that gave you the idea or any reason to believe that either Schulman or Goldman knew what was going on on
912 the other side of the wall? A. I don't think so.

Q. And so you say Morton Goldman came in there without any such suspicion and said to you, "You're a damned liar, I never said any such thing on March 25th." Right? A. He came into the room there and said that he hadn't done the things that I had said he had done when I made that statement to Judge Coxe.

Q. And that is the last of Morton Goldman. He went out after a little more talk of no consequence? A. You mean of personal contact with him?

Q. Yes, so far as you know there wasn't anything more

with Morton Goldman; right? A. I didn't see him after 913
April the 7th, other than the time that he passed through Theodore Goldman's office, at the firm's office.

Q. And although you were there in your opinion to get him down on that recording device that was operating, you never got Morton Goldman to say one word that you could recount here today that was in any way or in the slightest way wrong? A. Mr. Corbin—

Mr. Walsh: I object to the form of that question; it is argumentative and it is going to be the jury's function to decide that.

The Court: I will sustain the objection. 914

Mr. Corbin: That is all.

Cross examination by Mr. Fielding:

Mr. Fielding: I don't intend to go over the ground that Mr. Corbin has covered, but there are several matters that involve my client and I would like to go into them.

The Court: Yes. Very well. You may cross-examine.

Q. When did Kolman see Hymowitz? A. The first time?

Q. I said when did he see him? A. I think he went up 915
there on one occasion in the month of April to get some papers signed by Hymowitz pursuant to Schulman's request.

Q. Is that the first time? A. I think that may have been the first time that Kolman went up there. That was in April.

Q. Well, in that letter of March 24, 1937, I will read from it. This is your letter to the creditors? A. Is that the one that you are referring to, Mr. Fielding?

Q. Yes. A. Yes.

Q. "It is the wish of Paul Hymowitz that his business

916 be liquidated so that the creditors shall receive the greatest possible benefit and has entrusted Mr. Kolman with carrying out his wishes."

Well, how could he carry them out if he never met him?

Mr. Walsh: I object to the form of that question.

A. Why, he could relay that through me, Mr. Fielding.

Mr. Walsh: That is immaterial and irrelevant; "how could he do something."

The Court: I will overrule the objection.

917

A. Why, it was relayed through me, Mr. Fielding.

Q. Through you? A. I explained to Mr. Hymowitz that Mr. Kolman was in my employ and also associated with me.

Q. All right. Now who was the first one to your recollection that suggested a bulk sale? A. I think there was a Mr. Goldstein who was present at the meeting.

Q. Was he a client of Schulman's? A. Over at the—over at the Dry Goods Association?

Q. Yes. Was he a client of Mr. Schulman's? A. I don't know what their relationship was.

918 Q. Well, do you know who he represented? A. I think he also called up on the 24th day of March and he said that he represented another association. I think it was some haberdashery association, and he wanted to know all about that and I gave him practically the same information that I gave to the other two persons.

Q. So the first suggestion of a bulk sale did not come from Mr. Schulman? A. Mr. Schulman wasn't even present at that meeting.

Q. We will come to that. Just answer my question. A. No. I say the first suggestion came from a Mr. Goldstein.

Q. Yes? A. At that meeting on March 25th. 919

Q. And it did not come through either of the Goldmans? A. The very first statement, as I remember, was made by—

Q. Yes or no. A. By Goldstein.

Q. Say yes or no to me, will you please? A. I can't say yes or no to you, Mr. Fielding.

Q. Well, if it first came through Goldstein it didn't come from the Goldmans, did it? A. No.

Q. That is it; that is better. And it didn't come through Kandell? A. No.

Q. And at the same time and at the same meeting when Mr. Goldstein suggested a bulk sale, weren't Mr. Schulman's creditors there? A. At that time I didn't know that they 920 were clients of Mr. Schulman.

Q. But since then you have found that out? A. I found that out when the petition in bankruptcy was filed.

Q. Didn't they suggest a bulk sale, too? A. Yes. They said that they wanted to get buyers, that they would have people who would be interested in buying that and they wanted the keys for the premises, and I told them they couldn't have any keys.

Q. So that the bulk sale suggestion did not emanate from any of these defendants at all, did it? A. Some of them joined in after Mr. Goldstein made the statement to that effect. 921

Q. Well, it wasn't initiated by any of these defendants? A. The first statement to that effect was made by Mr. Goldstein.

Q. But it did not initiate from any of these defendants; yes or no? A. Well, it was so soon after that that you couldn't tell the difference.

Mr. Fielding: I move to strike the answer out as not responsive.

Mr. Walsh: If your Honor pleases, I object to this—

922 Mr. Fielding: Unless he cannot say yes or no.

Mr. Walsh: That has already been answered, to my memory, three times already. It is merely repetitious and immaterial anyway.

The Court: I will let him answer. I will overrule the objection. I think he has answered the question, but just how the answer should be—I think he repeatedly said Mr. Goldstein was the first one, but if Mr. Goldstein was the first one you can say that it did not come from these others. If that be a fact, he can answer the question yes or no, and if he wants to make any explanation, why, I will let him
923 do so, or if he doesn't remember, let him say so, just whatever the facts are.

The Witness: Shall I answer?

The Court: Yes.

A. Well, the first statement to that effect was made by Mr. Goldstein but the other persons there joined in and said that that would be a good idea about having a bulk sale and let each of them go and get a buyer, and it seems they were all anxious to get buyers.

Q. So among the people who were entitled to this estate, that is, the creditors, there seemed to be a fair
924 unanimity of opinion among them that a bulk sale was desirable? A. From those who were present.

Q. Will you answer my question yes or no. A. From those who were present, yes.

Q. None of them were very hot to go through with this assignment proceeding, were they?

Mr. Walsh: I object to the form of the question, the word "hot".

Mr. Fielding: Well, I will take out the word "hot."

Q. They weren't very anxious? A. No, sir. 925

Q. To have the sale conducted and the proceedings go through the assignment? A. Right.

Q. And they were the people entitled to this estate? A. Well, as far as I knew at that time very small faction; there were about 31 creditors and there were only three creditors there, if I recollect, and those three were the ones who signed the petition in bankruptcy.

Q. Well, those three are entitled to a share, aren't they? A. They are entitled to their proportionate share.

Q. And they are entitled to their opinion? A. They certainly are.

Q. Now you were over in Schulman's office on the 5th 926
of April, is that right? A. April 5th, yes.

Q. When was the first time you were there when you knew the FBI men were on the other side of the wall? A. April the 7th.

Q. Now just tell us how that came about, will you? I would like the jury to know; just tell us. You were going to see Schulman what date? A. Oh, you want me to tell you what took place—

Q. How did you get there? A. On the 7th, or events on the 5th leading up to the 7th?

Q. The 7th; we will say the 7th. A. Well, on the 7th I kept my appointment that I had with Mr. Schulman. 927

Q. Now, how did you make the appointment? A. I made the appointment with some of the agents, fixing the time late in the afternoon.

Q. Whom did you call first, Schulman or the agents? A. I think I spoke with the agents first.

Q. And then you told them you were going to make a date with Schulman? A. I told them on the 5th that I had an appointment with Schulman.

Q. And you told them about what time you were to be there? A. No. I was asked to make the appointment for a day or so later.

928 Q. To suit the FBI people? A. I assume that to be the case.

Q. Well, it is a fact, is it? A. Well, it appears to be the fact.

Q. Assume or appear, but is it? A. Well, I don't know what they feel. I was acting under instructions, Mr. Fielding.

Q. Well, coming down to the next time you were there, that was a week later, the 14th. Now how was that fixed? A. I think that appointment was arranged between Mr. Schulman and myself, and I—

Q. Well, who made the arrangement? A. Both of us
929 did.

Q. Somebody had to call somebody first. Now who did it, to the best of your recollection? A. Well, I don't know. There were some conversations between the 7th and 14th over the telephone regarding the offers that Mr. Schulman was to get or had obtained from his buyer or buyers.

Q. Well, did you suggest to go down to his office? A. I think that he suggested that I go to his office.

Q. And then what did you do after you got over? A. Communicated that fact to the FBI.

Q. And kept your date? A. And kept the appointment.

Q. Now when was the next time you were there? A.
930 I think it was on the 21st of April.

Q. The 21st. Now how did that come about, that meeting? A. By some talk that I had with Schulman on the telephone.

Q. After you made the appointment what did you do then? A. I notified the FBI.

Q. And then kept the appointment. A. Yes, sir.

Q. When was the next meeting? A. I think it was the 26th of April.

Q. How did that come about? A. Also in a conversation that I had with Mr. Schulman over the telephone.

Q. And the appointment was definitely fixed for the 26th? 931
A. Yes, sir.

Q. And after you had a definite appointment then you notified the FBI? A. Yes, sir.

Q. And then went and kept the appointment? A. Yes, sir.

Q. And after that was there any further meeting at Schulman's office? A. Not at Schulman's office.

Q. On these meetings that you have testified about, did you make any notes of what happened? A. Not at the meetings; when I got back to my office.

Q. Well naturally you wouldn't sit down in front of Schulman and write out that he was going to fix you up 932
with a couple of hundred dollars. A. Well, I don't know what your question implied.

Q. Right as soon as you left and went back to your office—or did you go over to the office or did you go over to the Federal District Attorney? A. No, I went over to my office.

Q. To your office, and then you dictated what went on? A. Yes.

Q. And then you handed those papers in to the Federal District Attorney or the FBI? A. Yes.

Q. And you did that every time? A. I would say I did that regularly. 933

Q. Was there ever any mention by Schulman to split a secret fund before the FBI men were on the other side of the wall? A. Yes. On April 5th.

Q. April 5th. That is the time that you were fit to be tied. A. That is the time after I came from Judge Coxe's chambers.

Q. Well, were you fit to be tied? A. I was pretty sore at that time.

Q. This morning you said you were fit to be tied. A. Pretty sore.

Q. Now how many of the meetings where you knew the

934 FBI agents were listening was this discussion going on about the cut or the supposed cut of $400, and so on? A. Oh, I think there was general talk about those splits in every one of those meetings from April 7th up to and inclusive the 26th.

Q. And you led the conversation? A. I participated.

Q. You brought it around to that— A. I was there only for one purpose.

Q. Let me finish. You brought the subject up, didn't you? A. I was there for that purpose. Mr. Schulman wanted me to come down. The appointment was made to discuss that.

935 Q. You were there to trap Schulman?

Mr. Walsh: I object to that. That calls for a legal conclusion. That opens up a new door here.

The Court: Yes. I sustain the objection.

Mr. Fielding: Exception.

Q. Now you served the notice of hearing to vacate that order which stayed your sale, didn't you? A. Yes, sir.

Q. Did you make any attempt either on that same day before you appeared before Judge Coxe to get that order ex parte, as we lawyers call it, or without notice? A. To vacate the stay?

936 Q. Yes. A. There was—there was an order—I think there was a set of papers drawn and that was to be submitted to the Court and the effect of that order, if signed, would have permitted the sale to continue subject to the approval of the Federal Court.

Q. So you tried to get that without notice? A. I don't know whether that was ever submitted. I think it was prepared.

Q. Well, you had it in mind? A. Oh, yes. That was when I learned that the petition in bankruptcy had been filed on the Saturday prior.

Mr. Fielding: Will your Honor bear with me for 937
just a moment?

The Court: Yes.

(Discussion among defense counsel off the record.)

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer:

Q. Mr. Hoffman, this Hymowitz case started on March 24, 1937, didn't it? That is the date of the assignment? A. Well, it was, I think, dated the 22nd, Mr. Mintzer, and it was accepted by the assignee on the 24th.

Q. That it was filed in court? A. About that; it was 938
filed on the 24th.

Q. Now I noticed yesterday that your application for allowances was dated December, 1937; is that correct? A. That is correct.

Q. So that the case was pending in the State court and in this court approximately eight months, isn't that correct? A. Approximately, correct.

Q. Now during these entire eight months how many talks did you have with Mr. Kandell, my client? A. I think I had one talk with him.

Q. One talk. And that one talk was on March 25th at your office? A. No. I would say there was two talks on 939
that one day. The first time—

Q. The first talk was on March 25th at your office? A. That is correct.

Q. Do you recall whether or not he told you at your office that he represented Butler Brothers? A. I think one of them did say that, either Theodore Goldman or Mr. Kandell.

Q. And Mr. Kandell asked you about the facts and circumstances relating to the Hymowitz case? A. I think he did.

Q. Do you recall him asking you whether or not you

940 had books and records so that he could look the books over? A. I think there was some statement made to that effect at the meeting which was held in his office the same day, and I explained to him that there were bills and some other records. There weren't any books, in other words, a regular set of books.

Q. What also happened at that meeting was that some suggestion was made for Kandell to act as co-assignee, isn't that so? A. That is at the meeting in my office?

Q. Yes. A. Yes, sir.

Q. Now is it not a fact that if Kandell were permitted to became co-assignee there would not have been added one
941 single penny of additional expense to the estate? A. If Kandell had been permitted to act as co-assignee and nothing else, why, there would not have been a single cent added to the expense of the estate.

Q. I understood you to say this morning, in answer to one of Mr. Corbin's questions, that you did not see anything improper in the request made for Kandell to act as co-assignee? A. At that particular time?

Q. Yes. You thought it might have been unnecessary? A. Yes, sir, there was nothing improper, but I told him it was absolutely unnecessary in this case.

Q. Now did Mr. Kandell at that time say anything to
942 you, or make any suggestion to you that was illegal or improper? A. Well, when you put it that way, let me see: I do not want to term it improper or illegal. I don't just want to be the judge of that, but if you want some of the statements made, I can give you those.

Q. Did he say anything to you that you, as a lawyer, would say was illegal? A. Not illegal.

Q. Let us come to the second time you saw Mr. Kandell, that was on the same day in the afternoon? A. Right.

Q. That was at the creditors' meeting? A. Yes, sir.

Q. Did you have a talk with Mr. Kandell later? A. General talk.

Q. You didn't have a personal talk with him? A. No, 943
sir.

Q. This alleged conversation you had with Mr. Goldman was outside of that room? A. Yes, sir.

Q. Mr. Kandell was not present at that conversation? A. No, sir.

Q. Did Mr. Kandell say anything at the creditors' meeting which you as a lawyer would say was illegal? A. I don't think he did.

Q. Did you see him again after that creditors' meeting? A. No, sir.

Q. During the entire balance of the pendency of the case? A. No, I did not. 944

Mr. Mintzer: That is all.

The Court: Any further cross-examination by any of the defendants?

(No response.)

The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Mr. Hoffman, you testified, I believe, that on March 25th, that is the day in which the meeting took place at the Dry Goods & Furnishings Association, Mr. Morton Goldman made a suggestion to you. A. Which suggestion? 945

Q. Didn't you testify that some suggestion was made to you? A. The suggestion to leave the room, or step outside in the hall, or what?

Q. Tell us again everything that Mr. Morton Goldman told you that day.

Mr. Corbin: Objected to as not proper rebuttal.

The Court: I sustain the objection.

Q. Tell us what Morton Goldman said to you outside in the hall.

946 Mr. Fielding: I object on the same ground.

The Court: Sustained. That was gone into fully on cross-examination. I don't think it is necessary to go over things that have been fully developed by both sides.

Q. You testified, did you not, that Morton M. Goldman told you that he was going to throw $10 to the creditors, or each creditor present, did you not? A. That is correct.

Q. Will you explain to the Court and jury whether every creditor of the estate was going to share in that $10, or that everyone was going to get $10?

947 Mr. Mintzer: I object to that.

The Court: Objection sustained.

Q. Will you tell us whether the creditors who were going to share in the $10, or who were going to get the $10, were described more particularly?

Mr. Mintzer: Same objection.

The Court: I sustain the objection.

Q. You were asked on cross-examination, were you not, how the appointment was arranged with Mr. Schulman.
948 Will you please tell us again when the first appointment with Mr. Schulman was made, that is the first appointment after April 5th?

Mr. Fielding: I object to the question as being improper on redirect.

The Court: I overrule the objection.

Mr. Fielding: Exception.

A. Why, the appointment was arranged with Mr. Schulman after I had spoken to one of the FBI men, that is the first meeting after April 5th.

Q. You testified that on April 5th you were before Judge Coxe and subsequently you went to Schulman's office. In that talk in Schulman's office did you arrange an appointment with Schulman to take place in the future? A. I think there was an appointment made to take place the following day, April 6th. 949

Q. Was that before or after you spoke to the FBI and to Referee Kurtz? A. Before.

Q. And what had Mr. Schulman told you for what purpose that appointment was to be arranged, or was being arranged? A. I think that was to have Mr. Kandell and Mr. Goldman meet at his office with him and me.

Q. You were asked on cross examination whether you had ever seen Schulman subsequently, subsequent to April 26th, I believe. Did you ever see him subsequently? A. Why, I saw him as late as December of 1937, about that time. 950

Q. Where did you see him in December of 1937? A. At my office.

Q. What transpired there when you saw him? A. He came up and asked for his cut of the $300.

Q. Which $300? A. That had been allowed to the co-attorneys by the Court in the assignment proceeding.

Q. Did he say what his cut was to be? A. He wanted $50 in cash. 951

Mr. Corbin: I object to it in the case of my client.

The Court: I sustain the objection at this time as to all the defendants except as to Schulman. It might become competent later on. If so, I will instruct the jury at that time, but at this time it has no probative force against any of the defendants other than Schulman. You may proceed.

The Witness (continuing): He asked for the sum of $50 in cash from me.

952 Q. Tell us the whole conversation that took place that day? A. He wanted me to make out a check for $150 to Goldman, Malter & Goldman. He wanted me to give him the check and he said he would get $50 from them and he wanted $50 in cash from me.

Q. Did he say anything else?

The Court: Was that gone into by you on the original examination?

Mr. Schachner: No, your Honor.

Mr. Fielding: We didn't go into that meeting that he is talking about. It was never discussed, your Honor.

953 Mr. Walsh: Questions were asked, did you ever see Schulman after April 26th. This is the time he did see him and they opened the door for that particular part of the case, that part of the conspiracy.

The Witness: What is the question?

Q. Just tell us the whole conversation that took place that day as well as you remember it. A. He came up and said he was entitled to one-third of the $300, and I told him that under the circumstances I think at that time a demand had been made for $150 by Goldman, Malter &
954 Goldman, and I told him I would have to make a check out to Goldman, Malter & Goldman for $150. He said that would be all right, but to give him that check and he would get $50 from them and he wanted $50 from me. I gave him some excuse and he said something nasty.

Q. This $300 was the amount allowed by the Court? A. That is correct.

Q. You were also asked whether you saw Teddy or Theodore Goldman again after April 26th. Will you please tell us whether or not you saw him again? A. I saw him in the latter part of May, 1937.

Q. Did you have a conversation with him then? A. I had some talk with him.

Q. Tell us the conversation that you had with him? A. 955
Well, the talk was in connection with a motion that had been made by the Endicott Johnson people to discharge the assignee, and there was some discussion about what should be done with that motion.

Mr. Corbin: When he says "discharge" I am sure he means removing.

The Witness: I think you are correct, Mr. Corbin, removing the assignee.

Mr. Corbin: To replace him with someone else.

The Witness: I don't know whether any application was made at that time to replace him, but the 956
motion was directed mainly to removing the assignee. So there was a talk over at Mr. Goldman's office. Mr. Schulman was there. I think some call was put in—

Q. Was there anybody else there except the defendant Schulman and Theodore Goldman? A. The only thing is that Mr. Morton Goldman went through the office on two or three occasions. Nothing was said between us.

Q. Now continue. A. I think a telephone call was put in to a Mr. Severance Scott of the Endicott Johnson Company. I think the call was also put in to the attorney representing that company, and an effort was made to have 957
the moving party withdraw or discontinue that application to remove Mr. Kolman, the assignee.

There was some talk there about giving Mr. Severance or Mr. Scott, whatever his name is, $25 or $50 for him to withdraw that, and I think there was also mention made of the fact that while there was some discussion, I cannot recollect the entire thing at this time, but I think it was finally decided that another auctioneer be brought into the picture and that that would pacify this chap by the name of Severance Scott, or Scott Severance, or whatever his

958 name was, so that he could get his cut out of it by way of that.

Mr. Schachner: That is all.

Mr. Mintzer: I hate to interrupt. But here again, your Honor, we have a number of conversations which took place not in the presence of my client, and I would ask your Honor to instruct the jury as to that.

The Court: As far as the defendant Kandell is concerned, that conversation has no probative force as against him at this time.

Mr. Corbin: And that applies as to my client?

959 The Court: Yes, it applies to Morton Goldman at this time.

Mr. Walsh: Any further questions, gentlemen?

Recross examination by Mr. Corbin:

Q. This Endicott Johnson motion that you referred to was made by a lawyer by the name of Siegel, wasn't it? A. I think that is correct.

Q. And he made a rather lengthy application, I mean in point of size of papers to the Court, setting up many facts in connection with the matter and asking for the

960 removal of the assignee, your man Kolman? A. There was such an application, Mr. Corbin.

Q. And he got an order to show cause from Judge McCook in which the Judge restrained the assignee and the attorney for the assignee and the assignor from interfering with, by disposing by sale or otherwise with the property of the assignor at 346 Bowery. Do you recall that? A. What is the question, whether I recall that?

Q. Do you recall Judge McCook so provided? A. Yes, sir, that was in connection with a bulk sale notice which I understand had gone out, of which I had no notice.

Q. Judge McCook's order restrained you and your man

Kolman, that is all I asked you. A. Can I look that over (indicating papers)? I would rather do so. I don't know whether the order was also directed against Goldman. 961

Q. I don't care about the "also." (Shows witness papers.) A. Is this a copy of the order? That is what the order said.

Q. Just as I indicated? A. Yes, sir, if that is the copy of the order on file. If you say it is, Mr. Corbin, I will take your word for it.

Q. And that application was made upon the ground that you were the attorney for Hymowitz? A. May I see it, please?

Q. It says right in the order that you as attorney. A. I want to see it. 962

Q. Yes. (Hands papers to the witness.) Have you got to read that whole file of it to answer the question? A. Mr. Corbin, didn't I tell you there may have been something in here about a bulk sale and I wanted to make certain. Here I am coming to it. The restraining order was applied for on several grounds.

Q. All right. One of them was that you and Kolman were representing the assignor. A. No, one of them was the fact that although I represented Mr. Kolman as attorney in the assignment proceeding, I also appeared as attorney for Hymowitz in the application to dismiss the petition in bankruptcy. That I think was the main ground the attorney there tried to show that I represented an adverse interest; on the face of it he was correct. There was also a statement about the bulk sale, and I think that is the sale the attorney was seeking to restrain. 963

Q. Of course it was. A. That is what he meant by disposing by sale, selling in bulk sale to somebody.

Q. The point is Endicott Johnson when they came into this fresh through an independent lawyer, took the same attitude with respect to you representing Hymowitz and the assignee, that the creditors and Goldman did on March 25th when they came up to your office?

964 Mr. Walsh: I object to that question as argumentative.

The Court: I sustain the objection.

Q. And Goldman was there on March 25th and he wanted joint control, didn't he? A. Yes, sir.

Q. And when Endicott Johnson came in they got joint control? A. They did not.

Q. Well, they applied to restrain you from selling and to remove you on the ground that you represented adverse interests? A. They discontinued that proceeding.

Q. I know. But before they discontinued it they got
965 rid of your auctioneer, or got another auctioneer in there with him? A. They got another auctioneer in with him.

Q. And that auctioneer came in on Endicott Johnson's suggestion? A. Endicott Johnson's suggestion, that was not joint control.

Q. And you told us yesterday that was by defendants. A. Put in by Endicott Johnson.

Q. That $300 Mr. Schachner asked you about on redirect examination was represented by a check, wasn't it? A. Yes, sir.

Q. Issued pursuant to an order of the court? A. Yes, sir.

966 Q. And to whom was that check payable? A. The check was made payable to Robert Hoffman or Goldman, Malter & Goldman.

Q. Did Goldman, Malter & Goldman, or any of them, ever get any part of that check, yes or no? A. Why, the answer is no.

Q. Who got it? A. I got it.

Q. Oh! A. Every penny of it.

Q. You put it in your pocket and kept it? A. No, I put it in the bank and kept it there.

Mr. Corbin: I would like to look up the minutes 967
in the record of yesterday, your Honor.

The Court: You can look that up later and recall him. Any further examination from any of the other defendants' counsel?

(No response.)

The Court: Any further redirect?

Mr. Schachner: Just one question.

The Court: Confine it to redirect.

Mr. Schachner: Just one question, your Honor.

Mr. Corbin: Oh, I think it is here, your Honor.

The Court: All right.

968

By Mr. Corbin:

Q. Speaking of the fees that the auctioneer got, I asked you at page 151 of the record yesterday, "Didn't he get around $300 or over?" And you answered, "Half went to Rabowitz, another auctioneer, put in here by the defendants." A. I may have meant to say "through the defendants."

Q. When you said that it was not true? A. I meant "through" not "by the defendants."

Q. Through them? A. Certainly.

Q. They didn't have anything to do with it? A. They 969
made the arrangements with the attorney for Endicott Johnson.

Q. Certainly, and Endicott Johnson was the one that suggested the auctioneer Lipkowitz? A. I assume that to be the case.

Q. And not the defendants at all? A. The defendants not at all.

Redirect examination by Mr. Schachner:

Q. Was that petition filed by Endicott Johnson withdrawn through the instrumentality of the two Goldmans?

970 Mr. Corbin: I object to it.

The Court: I overrule the objection. If he knows and can give us not an opinion about it, but if he knows it as a fact or not as a fact, he can answer.

A. I think that was arranged by them for withdrawal or discontinuing.

Q. Were you sued by the Goldmans for one-half of the fee? A. An application was made to the Supreme Court—

The Court: I don't think that is redirect on anything on cross-examination, and I am going to con-
971 fine this to the cross-examination, as I am going to confine the cross-examination to something that was brought out on the direct examination, unless you overlooked some of the conversation. If you have I will allow you to reopen it.

Mr. Walsh: The witness was asked on cross-examination a minute or two before whether or not he kept that $300. Having been asked that question, I think it is only fair for the jury to know how and why.

The Court: All right.

Mr. Corbin: On redirect he spoke about $300, and
972 I asked him did he keep it. He said "Yes."

Now this is another subject that he wants to go into.

The Court: That is not cross-examination about anything brought out.

Mr. Schachner: I will withdraw it.

SAMUEL S. KOLMAN, called as a witness on behalf of the government, being duly sworn, testified as follows: 973

The Court: We will now take a few minutes recess.

(SHORT RECESS.)

Direct examination by Mr. Schachner:

Q. What is your occupation, Mr. Kolman? A. I am an attorney.

Q. You are associated with Mr. Hoffman in the practice of law? A. I am.

Q. Were you the assignee in the assignment for the benefit of creditors of Paul Hymowitz? A. I was. 974

Q. Did you ever go down to the store of Paul Hymowitz? A. Many times.

Q. Did you show the store to anybody who called up and asked you to see the store? A. I certainly did.

Q. You showed the store to everybody who called up? A. Well, if I found out that they were interested in the estate and in some cases they sent letters confirming the appointment. In other cases they asked me to telephone them for an appointment and I would do that.

Q. Did you ever go down to the store in the company of the defendant Schulman? A. I made an appointment with Schulman, I think it was in the early part of April, in the 975 early afternoon. He said that he wanted to show the stock of merchandise to a prospective buyer. I made that appointment and I met him there that afternoon.

Q. Did he come alone? A. He was accompanied by a person whom he introduced as Mr. Lieberman, and I think with him was another man. I don't recall whether he said he was Abramson or not.

Q. Well, tell us what happened that afternoon, what conversations took place. A. Well, after Lieberman inspected the merchandise Schulman said, "How much can

976 you tell us," and they withdrew to a corner of the store—I was a short distance away—and they talked in a low whisper, and during that conversation I heard the expression "five line."

After their conversation Schulman turned to me and he asked me whether he could talk to me the same as he could to Hoffman, and I said, "No, Hoffman was handling that." I then closed the store and Schulman and I walked towards Broadway. During that walk he told me that Hoffman was childish because he had opened up to the judge and told him the plan of Goldman. And he said, well, he supposed that Hoffman was very stuborn and that we were green-
977 horns and we had no right being in the case. I asked him why and he said, "Because just as others control the millinery line and the house furnishings line, so this Dry Goods Association controlled the dry goods and men's wear line, and any time there was an assignment the Goldman outfit handled it."

Q. Is that all that was said? A. So far as I recall, I think that was the substance of the conversation.

Mr. Schachner: Your witness.

Cross examination by Mr. Fielding:

978 Q. You say Mr. Schulman came to the store early in April? A. Yes, sir.

Q. And accompanied by Lieberman. Who was Lieberman? A. I think there was a—there may have been the firm of Abramson & Lieberman. I didn't know him. I had never seen him before.

Q. You don't know for what purpose he came? A. I think Schulman had said that he was a prospective buyer.

Q. Wasn't there some arrangement made for different prospective buyers to come at different hours? A. Well, no arrangement was made with me. Mr. Hoffman told me that

they may come up and make an appointment to see the store. 979

Q. Well, didn't you have several appointments of that character? A. Yes, sir.

Q. All at different times? A. At different times during that day.

Q. Yes. A. And at different times other days.

Q. And were you told the purpose of having these people come at different times? A. No, I wasn't told.

Q. You don't know anything about that? A. No.

Q. There was another man with him? A. I think there was, yes.

Q. But you don't know his name? A. I am not sure. I don't know whether Schulman introduced him to me. I 980 assumed it was Abramson.

Q. Did you know Schulman represented creditors? A. Oh, at that time I had known because the petition in bankruptcy had been filed before that meeting.

Q. You knew that he represented creditors? A. Yes.

Q. And that was why you let him, let his man inspect the merchandise? A. Yes.

Q. You say they went off in a corner and had some whispered conversation? A. That is right.

Q. After inspecting the merchandise? A. That is right.

Q. And all you heard of that conversation was "five line"? A. Yes, "five line." I thought it had something to do with 981 the price and that is why I remembered it.

Q. Well, it has no other intelligible meaning to you, has it? A. No. I don't think it does.

Q. Schulman asked you if you had the same authority or some authority so that he could talk to you, did he not? A. No, "Can I talk to you the same as I would to Hoffman."

Q. Well, yes. Isn't that it? A. Well, those were the words, I think, that he used.

Q. And you said you would have to see Hoffman? A. I said, "No, Hoffman was handling it."

982 Q. He expressed an opinion on the way to Broadway that Hoffman was childish? A. Yes.

Q. Well, did you know at that time that the creditors wanted this estate to be administered through bankruptcy? A. Well, the petition in bankruptcy had been filed, I think, on April 3.

Q. Did you know that there had been some dissatisfaction with the present method that then prevailed before the petition was filed? A. I didn't know there was any dissatisfaction with the present method.

Q. You did not know anything about it? A. Not about that.

983 Q. What did he say about "as others control" what lines? A. The millinery line.

Q. The millinery line? A. Yes.

Q. Did he mention any names? A. He did mention a name.

Q. Whom did he mention? A. Hirsch.

Q. Who is he? A. I don't know.

Q. And he said the Association—I presume it is the one that Mr. Kandell represented? A. That is that Dry Goods & Furnishings Association.

Q. Whenever an assignment or bankruptcy took place they handled the matter? A. He didn't mention bankruptcy.

984 Q. Well, it was a failure? A. Any assignment, he said.

Q. That means failure? A. It means insolvency.

Q. Yes. So that if it happened in that line in which this store was dealing, then it was a natural sequence that the Association would step in as a representative of creditors? A. He did not put it that way, no, sir.

Q. Well, it did not have an interest in the store itself, did it? A. He said whenever there was an assignment in that line it was a rule that the Dry Goods Association would handle it and that the Goldman boys handled the matter.

Q. As attorneys for the— A. That we had no business being in that case. 985

Q. And it was properly a matter for the Goldmans representing the Association? A. It was not properly a matter for the Goldmans representing the Association.

Mr. Walsh: I object to the form of that question.

The Court: I will overrule the objection. This is cross examination.

Q. There was no mention made at that time of any fake sale or fake bid, was there? A. Not to me.

Q. You never had any information that such a thing was suggested at any time, did you? A. I—Mr. Hoffman had told me about it, yes. 986

Q. Not from these defendants; not from Mr. Schulman? A. (No response.)

Q. You did not hear any suggestion from Mr. Schulman to that effect? A. Oh no, not from Schulman to me directly.

Q. No. A. No, sir.

Q. Or either of the Goldmans? A. Not directly, no, sir.

Q. Or Kandell? A. At no time, no, sir.

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer: 987

Q. Mr. Kolman, in all your life did you have one conversation with Mr. Kandell? A. No, sir.

Q. You never spoke to him in your life? A. I never did. I never knew him until I saw him in court here.

Mr. Mintzer: That is all.

Cross examination by Mr. Corbin:

Q. Did you have any conversation with Morton Goldman? A. No, sir, I never did.

Q. At any time? A. I don't know, no, sir.

988 Q. You don't know him. A. No, sir.

Q. And does the same hold true with respect to Theodore Goldman? A. Well, I did have some contact with Theodore Goldman.

Q. In connection with some papers he prepared to go through with the settlement? A. Well, I think—I recall a day in May, the latter part of May I went down to Theodore Goldman's office and I signed a retainer, retaining Lipkowitz and Wishbaw as co-auctioneers.

Q. Nothing unusual occurred there? A. No.

Q. And was that the same occasion that Mr. Hoffman was present at? A. I don't believe Mr. Hoffman was there
989 on May 28th when I signed that retainer.

Q. I show you this Government's Exhibit 1 (handing witness). That is the original assignment, is it not? A. It appears to be, yes, sir.

Q. And you executed it, didn't you? A. Yes, I did.

Q. Accepting the job in effect?

Mr. Walsh: I cannot hear you.

(Record read.)

Mr. Corbin: Of course, Hymowitz executed the assignment. This witness executed the paper. Just below it on a printed form—

990

Q. What do you call it? It is signed by the assignee. That is your signature, isn't it? A. That is my signature. I accepted the trust imposed on me.

Q. Yes. Tell me, did you prepare this paper (indicating)? A. I may have. I am not sure whether I did or whether I did not. I may have prepared it.

Q. All right. Now I show you this petition and order for bond and sale, signed by you, and the order signed by Judge McLaughlin. Did you prepare that paper (handing witness). A. I think I caused that to be prepared.

Q. Well, do you know who prepared it? A. I think I

dictated that petition and order, and if I recall I think it 991
was done at the auctioneer's office.

Q. Not your own office? A. No, not my own office.

Q. Well, you recall rather distinctly that in the petition which was signed and verified by you that you said that you had caused to be made an examination of the entire assets and had been informed and "verily believes upon investigation of the same that the entire assets, consisting of Army and Navy goods, fixtures and so forth are of the value of about $1500."

Do you recall that? A. Yes. I consulted the auctioneer with respect to the amount to put down for the purpose of obtaining the provisional bond so as to qualify. 992

Q. Had he seen the stock before— A. Yes, he had.

Q. You talked with him about the value? A. Yes, I had.

Q. And was it the investigation that he made upon which you made this allegation of the value being $1500? A. As I recall, I think I was with him when he was making that preliminary inventory so that it would assist me in preparing the petition for the purpose of procuring the order of sale and getting a provisional bond.

Q. Then this $1500 figure was put in here after investigation by the auctioneer as well as personal visitation by you to the premises? A. That's right, and he told me 993
that for the purpose of procuring the provisional bond that round figure of $1500 would be sufficient so that I could enter upon my duties for its faithful performance.

Q. The auctioneer told you that? A. Yes.

Q. Well, the Court had to tell you that, didn't it? A. Well, I submitted that to the Court's approval and apparently the Court did approve of it.

Q. You knew the rule that the value of the property that was coming into your hands had to be stated fully and fairly? A. That was the figure that the auctioneer

994 that we had retained gave and I took his figure for that purpose.

Q. Well, I am not criticizing— A. Now if, Mr. Corbin, that sale brought in more, why, the Court would have asked me to increase the bond and that would have been done.

Q. Of course I am not questioning that. My point is when you signed this you had made a real effort to ascertain the actual value of the entire stock that was coming into your hands, hadn't you? A. Well, I wouldn't call it a strictly real effort. I would call it a preliminary inventory that the auctioneer prepared so that this petition
995 might be submitted to the Court.

Q. Well, you knew the auctioneer— A. I had never know him before that day.

Q. Well, you recognized him as a man of some experience in the sale or value of such stocks of merchandise? A. Well, I assumed he had that experience and was qualified.

Q. And you believed that he was qualified to speak, and after he had examined the stock, as you knew because you were there— A. Yes, I was there.

Q. (Continued) And had made an inventory of it of some kind— A. If you will note, attached to that petition is the inventory.

996 Q. That is right. The whole thing had been listed and set out here in two columns. Right? A. That is right.

Q. Now after that work had been done the auctioneer expressed his opinion which you accepted as honest and reflected that opinion in that figure of $1500 that you swore to in this petition; right? A. He told me the value of $1500 and I put that in my petition.

Q. I say you accepted this as the real and honest value? A. I never—

Q. For the purposes of the petition? A. I never thought about it at all. I just asked him what figure I should put

in there, what he figured that merchandise was worth, and 997
he told me $1500 and I put it down there.

Q. Now that— A. Of my own knowledge I didn't know how much that was worth.

Q. All right. That bond was never increased, was it? A. No, it was not.

Q. And the petition was made on March 24, which was the same day that the letter went out to creditors, is that right? A. That's right.

Q. And the same day that the order was— A. Which letter are you referring to? Is that the letter to the creditors?

Q. Yes, the March 24th letter. A. There were several 998
papers, I think, that accompanied that letter.

Q. There was a notice of sale? A. A notice of sale and, I think, a notice of meeting too.

Q. Well, that was after Goldman had come in on the 24th and asked you to send a notice to creditors of a meeting? A. Well, he didn't ask me. I didn't speak to Goldman.

Q. You weren't going to call any meeting until Goldman put in an appearance, were you? A. That's right, I wasn't going to.

Q. And you had heard nothing of any meeting being called until Teddy Goldman got in touch with your office, 999
had you? A. I hadn't known of any meeting. Mr. Hoffman apparently was taking care of—I didn't know of any conversation with Teddy Goldman. I never had a conversation with him.

Q. But you were preparing these papers on that day, weren't you? A. Yes.

Q. The petition and the order and the retainer; you remember they were dated the same day? A. I think I prepared that too.

Q. And apparently done on the same machine? A. That is right.

1000 Q. And then on the same day the letter was mimeographed over in Wishbaw's office? A. That is true.

Q. Is that right? A. That is right.

Q. And you were attending to all that, weren't you? A. Yes, I was.

Q. And that all occurred two days after the assignment was dated March 22, March 24th? A. That occurred on March 24, I think.

Q. Yes. Two days after, the assignment? A. I didn't accept that assignment until the 24th.

Q. Oh, didn't you? A. I think that is when I signed it, on the 24th, and it was acknowledged on that date.

1001 Q. You are right, you are right. Acknowledged by Hymowitz on the 22nd and by you on the 24th? A. On the 24th.

Q. That is right? A. Yes.

Q. So that here on this March 24th you accept the assignment, you get up the petition and order for a sale, you get the order for the sale signed and the bond fixed on that date, right? A. That's right.

Q. And you get up a letter to creditors and have it mimeographed and send it out on the same day, the 24th, together with a notice of the sale; right? A. That is—that was done.

1002 Q. All that was done without any consultation with creditors as to the dates of the sale, wasn't it? A. My purpose in accepting that trust was for the benefit of the creditors and I thought if I could get a speedy sale it would save insurance and rent where the goods were located.

Q. But did you or Mr. Hoffman, to your knowledge, communicate with any creditor prior to the time of either fixing the date for the sale or deciding to apply for an immediate sale? A. Well, as I understand—

Q. Did you communicate with any creditor before that? A. I didn't communicate with any creditor.

Q. And he did not so far as you know, did he? A. Well, 1003
I think they communicated—some communicated with him. Some people communicated with him, I think.

Q. All right. But I say— A. And I was at all times willing to tell them the—

Q. All right. A. —what the estate consisted of.

Q. But I want to this picture straight. Here on the 24th you accept the assignment; you get all these papers up and the notice out to creditors, and get a sale directed and a bond fixed and a sale notice sent out to creditors, all on that same day? A. That's true.

Q. Without any prior effort to get in touch with a single creditor, is that right? A. For what purpose? 1004

Q. For any purpose. A. I was interested in administering the estate, and my duty was to turn that into cash, liquidate it for the benefit of creditors.

Q. Perhaps you don't understand me. As to when the sale should be had, as to whether it should be had in bulk, as to whether it should be had in an assignment proceeding, as to who should have notice of it, as how it should be advertisied, as to who the auctioneer should be; none of those questions were submitted to a single creditor, were they? You went ahead without talking with any one of them? A. It was already an assignment proceeding and I 1005
think the regular procedure there is to prepare an order of sale.

Q. Well, irrespective of regular procedure— A. Advertise in the Law Journal, appoint an auctioneer.

Q. Tell me, had you talked with a single creditor or given a single creditor a chance to sit in and talk with you before you got out any of these papers on the 24th? A. Well, isn't that the purpose of ten days difference between the time the order is procured and the time it is advertised for sale?

Q. Will you, instead of asking me, just answer my ques-

1006 tion. Did you do all this and get the sale set and the auctioneer hired before you had talked with a single creditor as to any of those matters of interest? A. I didn't talk to any creditor.

Q. Did you get any inventory from Mr. Rich? A. I did not.

Q. Do you know who he is? A. I never heard of any inventory from Mr. Rich and I never heard Mr. Rich until you mentioned it today.

Mr. Corbin: All right, that is all.

1007 The Court: Any redirect?

Redirect examination by Mr. Schachner:

Q. Did you follow the regular procedure as you understood it to be required in the case of an assignment, and did you insert the notices in the Law Journal for ten days or twenty days, whatever period it is, so that creditors could get in touch with you? A. I tried to the best of my ability to follow the regular procedure.

Mr. Schachner: That is all.

Mr. Corbin: That is all.

1008 (Witness excused.)

SAUL DUNN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Dunn, did you work for Gabriel Wishbaw during March, 1937? A. Yes, sir.

Q. That was in connection with a general assignment for the benefit of creditors in the case of one, Paul Hymowitz, and a proposed auction sale of the assets of Paul Hymowitz? A. Yes, sir.

Q. What were your duties with respect to the assets 1009
contained in the store at 346 Bowery? A. Well, I worked as a lotter. A lotter is a man who prepares the inventory, preparations for a sale.

Q. After you had made that inventory and had made the preparations for the sale did you estimate the value of the merchandise in the store? A. I estimated the value the night previous to my lotting, which I was called by Mr. Hoffman and Mr. Wishbaw.

Q. What was the value at which you estimated the merchandise to be? A. Well, when I went through it I started on one end of the shelf and worked myself all the way around, and I approximated the value at $1800 to bring 1010
at auction.

Q. That would be the auction price? A. Well, I estimated it would bring about that.

Q. Did you also make an estimate of the cost price? A. Well, I don't know the cost price of merchandise. I only estimated what I think it's going to bring at an auction sale.

Q. Can you tell us whether the same stock sold in bulk would bring more or less than at an auction sale? A. Well, I don't know if it would bring more or less.

Q. You cannot tell us? A. I can't tell that. 1011

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. What investigation, Mr. Dunn, did you make of the stock before you came to that $1800 figure? A. A rough estimation by just going around and feeling the boxes and estimating, to my opinion, what I think it's worth.

Q. Well, that was more or less of a quick once-over, wasn't it? A. That's right.

Q. And you walked in the store and along the sides and back of the counters? A. That's right.

1012 Q. And did you make any count that night? A. No, sir.

Q. Didn't take the stuff out of the boxes and count it or examine it? A. No, sir.

Q. Did you realize at that time that some of the stuff was pretty old? A. Well, I noticed this stock that I go through has obsolete merchandise. I noticed some merchandise obsolete, or old merchandise.

Q. And a lot of the stuff was winter stuff, wasn't it? That was seasonable at the time? A. That's right.

Q. Well, there did come a time when you did some lotting, do you call it, on that merchandise? A. Yes, sir.

Q. That is, during the subsequent days, two or three
1013 or four days you were working there on that merchandise? A. Yes, sir.

Q. And then you did take it down and get it out and examine it carefully and listed it? A. That's right.

Q. And get it ready for sale? A. Absolutely.

Q. Well, sometime during those days after you had a chance to examine it more thoroughly in the daytime you had a change of opinion as to its value, didn't you? A. Yes, sir.

Q. What, after full examination and thought about it and after having seen it and worked on it and worked with
1014 it and listed it, after all that, what was the opinion that you entertained as to what it would be reasonably worth on a sale? A. Well, when I went through it thoroughly and I judged my lots, after it was all fixed up and counted, I thought that I estimated it roughly too high, and I thought it was worth a couple of hundred dollars less.

Q. So you think 15 to $1600 was a fair value? A. That's right.

Q. Rather than the 18? A. That's right.

Q. And you told Mr. Wishbaw and Mr. Hoffman that, didn't you? A. Well, after it was all lotted I knew exactly what I thought it was going to bring.

Q. Yes. I mean when you saw your opinion was too high, you told them it was a little high? A. Yes. That was afterwards. 1015

Q. You told them you thought it ought to be taken at the lower figure? A. That is right.

Mr. Corbin: That is all.

The Court: Any further cross examination?

Mr. Mintzer: No.

The Court: Step down.

(Witness excused.)

GABRIEL WISHBOW, called as a witness on behalf of the Government, being duly sworn, testified as follows: 1016

Direct examination by Mr. Walsh:

Q. What is your line of business, Mr. Wishbaw? A. Auctioneer.

Q. And how long have you been a licensed auctioneer? A. Since 1934.

Q. And prior to 1934 had you been in the same line of business? A. I was.

Q. With whom? A. A firm of A. Joseph & Company and a firm of Harry Rothenberg.

Q. During March of 1937 did you have occasion to meet a man by the name of Mr. Hoffman? A. I did. 1017

Q. And whereabouts did you meet him? A. At Mr. Hoffman's office.

Q. And how did you happen to go there? A. Mr. Hoffman had called me on the phone and said that he had done business with A. Joseph & Company, that he had called that old exchange and was referred to me, and that he had some matter on hand; would I come down to his office to discuss it with him.

Q. And did you go there? A. I did.

Q. And did you have a conversation with him? A. I did.

1018 Q. And after that conversation did you have somebody go down to the store at 346 Bowery? A. Yes. I called—

Q. Who did you have go down there? A. Mr. Dunn.

Q. And what did he do there? A. Made a rough inventory and appraisal.

Q. And do you remember how much Mr. Dunn told you the inventory was at that time? A. About $1800.

Q. And the next day did you go any place with Mr. Hoffman? A. Yes.

Q. Where? A. I went to the general creditors' meeting at 175 Fifth Avenue, at the Association.

Q. And who was present at this meeting, whomever you
1019 remember? A. Well, there was Mr. Kandell, Mr. Phillip Cohen, Mr. Goldstein, Mr. Morton Goldman—I believe there were three creditors, Mr. Hoffman and myself.

Q. Now, incidentally, how long have you known Morton Goldman, one of the defendants? A. Well, I don't know him personally. I hadn't known him personally, but I knew of him, well, for some years back.

Q. When you were connected with Joseph & Company, is that what you mean? A. That's right.

Q. And Mr. Goldman had used Joseph & Company? A. That's right.

Q. And they were auctioneers too? A. That is correct.
1020 Q. How long have you known Kandell? A. Well, I should say approximately the same time I have known of him.

Q. Through Joseph & Company? A. That is right.

Q. And had Mr. Kandell used Joseph & Company, the auctioneers? A. I think he had on occasion.

Q. But neither Kandell nor Morton Goldman had hired you? A. No, they hadn't.

Q. Now, at this meeting will you tell the Court and jury briefly what happened there. A. Well, at the meeting—

Q. And what your purpose was there. A. Well, Mr. Hoffman suggested that I go to the meeting with him to

answer any questions that may be put to me regarding the 1021
value of stock or the type of stock on hand.

Q. And you were prepared to answer those questions? A. Yes.

Q. Had you gone down to the store yourself? A. Yes, I was down to the store.

Q. For examination? A. I was.

Q. And did you agree with Mr. Dunn that the value was $1800? A. Well, approximately that figure.

Mr. Corbin: I object to it, what he agreed with.

The Court: I will sustain the objection as to the agreeing. 1022

Mr. Walsh: I will withdraw the question.

Q. What was your explanation of the valuation of the articles in this store? A. Well, just judging with the eye I should say around 17 or $1800.

Q. And how long did you judge with the eye? A. Oh, not very long.

Q. Approximately how long? A. Perhaps a half-hour.

Q. And during the course of this meeting what happened, if anything, so far as Morton Goldman is concerned? A. Well, briefly, at the meeting Mr. Hoffman presented the situation regarding the assets and liabilities and first pro- 1023
posed to go through the assignment proceedings and liquidate the merchandise stock on hand at public auction through me as an auctioneer. At that time creditors who were present raised an objection to the assignment because of its lengthy procedure and costly procedure and suggested that some other manner be found in which to handle this matter, and suggested a bulk sale. During the course of this—

Q. In the event that there was a bulk sale would they have used you, sir? A. No, there would be no occasion for an auctioneer.

1024 Q. After this suggestion for a bulk sale what happened, if anything? Did you leave the room? A. Yes.

Q. With whom? A. Mr. Hoffman and myself left the room. I think we were out—

Q. Did you leave the room at anybody's suggestion? A. I think Mr. Goldman asked—

Q. Which Goldman? A. Mr. Morton Goldman, I think, if we wouldn't mind retiring for a few minutes.

Q. And did you go out of the room? A. I did.

Q. With Mr. Hoffman? A. Yes.

Q. And subsequently, did anybody join you outside of the room? A. Mr. Morton Goldman.

1025 Q. And were you present at the conversation between—was a conversation had between Mr. Hoffman and Mr. Goldman? A. There was.

Q. Did you hear it? A. I did.

Q. What was the conversation? A. Well, a short conversation—

Q. I don't want it short. I want it as fully as you can explain it at this time. A. Mr. Morton Goldman said that he thought it would be best for all concerned to go through with a bulk sale and settlement with creditors, and that it was a shorter way of settling this estate, that creditors would be satisfied by an amount agreeably acceptable to

1026 creditors, in a percentage of settlement and further, that the debtor, Mr. Hymowitz, would be able to secure general releases for the balance of his debts, and in addition thereto, neither Mr. Hoffman or myself would suffer by any loss of fees, that we would be compensated just the same.

Q. Well, go ahead. A. That the idea behind it would be to secure a buyer, and after taking the highest offer that could be gotten privately, and use those funds for the purpose of settling with creditors, and in addition thereto, take care of the administration fees in which Mr. Hoffman, myself and Mr. Morton Goldman and Mr. Kandell would be able to share.

Q. Were there going to be two prices, did I understand you correctly, one which would be told to the creditors? 1027

Mr. Corbin: Oh no; I object to it.

Mr. Walsh: I did not understand that.

The Court: Yes. I sustain the objection as leading. Let the witness testify.

Q. What was the conversation so far as what the price was going to be as told to the creditors? A. There wasn't any particular price mentioned at that time. As a matter of fact, I remember asking—answering one of the creditors and telling him that the men were—

Q. I would like you to confine yourself to the conversation with Mr. Goldman. What was his plan at that time? 1028

Mr. Corbin: I think he ought to be allowed to finish the answer that he started.

Mr. Walsh: Well, he is talking now about the meeting inside the room, as I understood it. If I am in error—

The Court: Answer the last question asked.

Confine his answer to the conversation had between Mr. Goldman and Mr. Hoffman in the hall.

A. There wasn't any particular amount specified as to what they would obtain, but the idea was to obtain a purchaser who would pay an amount sufficient to settle with creditors and in addition, administration fees and disbursements. 1029

Q. Anything else said? A. No, I don't believe there was anything further than that, except to give the matter some thought, out in the hallway.

Q. This was under the bulk sale, isn't that correct? A. That was under the bulk sale.

Q. Well, I asked you before whether or not you would be out if a bulk sale was consummated. A. Oh yes, definitely.

1030 Q. Now does that refresh your recollection as to what was said concerning what part you would get? A. Well, again there was no figure, but that I would be allowed a fee.

Q. By whom? A. Well, out of the proceeds.

Q. You weren't entitled to a fee, were you? A. Well, I would be entitled to a compensation up to the amount of services rendered up to that point.

Q. Was there anything else said in the hall between or among Mr. Hoffman, Mr. Goldman and yourself? A. Insofar as the conversation with Mr. Hoffman in the hall, I don't recall anything further.

Q. Was anything said about the creditors? A. Yes.

1031 After we were—well, we went back into the meeting room, and I think it was decided by Mr. Hoffman out in the hall prior to that time that he would give the matter some thought, and we went back into the meeting room at which time arrangements were made as to provide hours for the purpose of inspection, that anybody present or who knew anybody that might be interested in the purchase of the stock, and I think there were three or four hours arranged for such purpose.

The Court: Gentlemen, I believe this is a very good place to quit now. It is almost 4:30.

1032 (Discussion off the record re adjournment.)

The Court: Very well. We will recess this case until 1:30 tomorrow.

(Adjourned to July 19, 1940, at 1:30 P. M.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al.

New York, July 19, 1940.
1:30 P. M.

TRIAL RESUMED. 1033

GABRIEL WISHBOW, resumed the stand.

Mr. Walsh: May the record indicate that all of the defendants are in court.

Direct examination continued by Mr. Walsh:

Q. Mr. Wishbow, at the close of yesterday afternoon's session I believe you were testifying or were going to testify that after you had a conversation with Mr. Hoffman, Mr. Morton Goldman and yourself in the hall, that you then went back into the room where the creditors were? A. That is right. 1034

Q. Will you continue from there, sir? A. At that time arrangements were made for the purpose of permitting an inspection of the premises of the debtor and, if I recollect correctly, I believe I made notations of various hours that persons were supposed to be present for the purpose of making this inspection. And shortly thereafter the meeting adjourned.

Q. After the meeting adjourned did you, Hoffman and Mr. Goldman stay around for any length of time? A. I think for a short time thereafter. 1035

Q. Was anything else further said at that time? A. Yes, sir. With further regard to having Hoffman fall in line with the suggestion of a private settlement.

Q. And what was said? A. Well, at that time it was thought that that method would prove the most satisfactory one to all concerned, and at that time Hoffman said, "What about the information that I have given on the letter with regard to assets and liabilities? How will that react?" And I think it was at that point something was said—"Well, the creditors will get $10 a piece, and everybody will be satisfied."

1036 Q. Do you remember who said that? A. I think Mr. Goldman—

The Court: Let me ask you right there—was Mr. Kandell in the room at that time?

The Witness: Yes, sir, he was.

Q. And those ten dollars you said was going to be given to the creditors. Who was there—

Mr. Corbin: I object to that, your Honor.

The Court: Objection sustained.

1037 Q. To whom was the $10 going to be given? A. The statement was general that the creditors would get $10.

Q. By that did you understand that all the creditors of the whole assignment were going to get $10 a piece? A. Well, probably I didn't, probably the creditors who were present.

Q. Where was the $10 that was going to be given to creditors to come from? A. I suppose that was to come out of the funds from which we were going to get funds, the second funds.

Q. And the creditors knew nothing about that? A. I don't know whether they did or not.

1038 Q. They were not administration expenses, were they? A. Well, I believe they were termed "administration expenses".

Q. By whom? A. I don't recall exactly.

Q. Administration expenses are put in the final accounting, are they not? A. Referring to the administration expenses of the estate, yes, sir.

Q. And the $10 that were to be given to the creditors are put—

Mr. Corbin: I object to that, your Honor. He is putting words into the witness's mouth.

The Court: Yes. Objection sustained. 1039
Mr. Walsh: I will withdraw the question.

Q. After that meeting—I now call your attention to the one around April 3rd, that was the day upon which the petition in bankruptcy was filed. Do you remember that? A. Yes, sir, I do.

Q. Did you go any place that day? A. Yes, sir, I went down to Mr. Hoffman's office in the afternoon of that day.

Q. And what did you do there? A. Well, Mr. Hoffman told me he had decided to prepare affidavits in opposition to the petition in bankruptcy, and suggested that I call up Mr. Goldman. 1040

Q. Did you call Mr. Goldman up? A. Yes, sir.

Q. Did you speak with him over the telephone? A. I did.

Q. Can you relate to his Honor and the jury what you and Mr. Goldman said on the telephone that day? A. I asked Mr. Goldman whether they were going to make an application for a receiver or stay the sale—

Mr. Walsh: May I interrupt you here.

Q. Which Mr. Goldman is this? A. Morton Goldman. He told me that he didn't know what if anything that was 1041
going to be done with it, that he had nothing to do with it. I told him I thought this petition—because Mr. Hoffman was making affidavits of his own relating to the entire transaction—that I was going to oppose it. He told me he knew nothing of the suggestion of the bulk sale, had nothing to do with it, or the petition or anything else. I told him I had been present at the time the bulk sale was discussed. He told me he had nothing to do with the matter, and he told me to stop annoying him, and hung up.

1042 Q. And subsequently did you go to the Court when an argument was being had? A. Yes, sir.

Q. After you appeared before Judge Coxe, if I remember correctly? A. Yes, sir.

Q. And after the proceedings before Judge Coxe did you leave the courtroom? A. Yes, sir.

Q. And did you have a conversation with anybody at that time? A. Well, on leaving the courtroom—I believe it was Mr. Schulman came over to me and asked me, "What was the matter with Mr. Hoffman?" I told him, "Don't discuss that with me. Anything you want to take up with him, talk to him about it."

1043 Q. What happened? A. We went across to Mr. Schulman's office, Mr. Schulman and myself.

Q. Did you go into the office? A. No.

Q. What did you do? A. I was in the outer room.

Q. And you waited there? A. I did.

Q. Subsequently did you have various conversations over the telephone with Mr. Schulman? A. I can't recall that exactly. I may have.

Q. Did you have any conversations with him? A. I may have.

Mr. Walsh: That is all. Your witness.

1044 Cross examination by Mr. Corbin:

Q. If I can refresh your recollection about the "$10 a piece" to the creditors, isn't it a fact that what was said about $10 on March 25 there was that if Hoffman's proposal went through with the assignment, the delay and the expense of the proceedings under the assignment for the benefit of creditors, that most of these creditors would not get $10 a piece or that they would be lucky if they did get $10 a piece? A. Well, that was said at the early part of the meeting, I believe it was. I don't know whether

it was $10 but that they wouldn't realize very much out 1045
of it under the assignment proceedings.

Q. And wasn't there a repetition of that mention of $10 later after the meeting broke up? A. I can't recall that.

Q. Whether it was that that was said in connection with the mention of $10 or not at the later conference you can't tell one way or the other, is that right? A. I don't believe I can.

Q. You don't know? A. (No response.)

Q. You are not sure one way or the other? A. I am not sure which—whether it referred to that.

Q. Well, you did not hear any suggestion on the part 1046
of anyone that a creditor who had, let us say, a claim of $150 or $250 would only get $10 or would get $10 from somebody? A. No, I don't believe there was any specification of any particular creditor.

Q. There had been talk earlier and the talk may have continued in the later conversation that if this thing went through the way Hoffman had it planned, creditors or some of them, wouldn't get $10 a piece on their claims? A. Yes.

Q. Isn't that right? A. That was at the preliminary meeting, at the early stage of the meeting.

Q. And whether that continued or was referred to again 1047
in the later ones, when the $10 was mentioned, you don't know one way or the other? A. I am not quite sure whether it referred to that.

Q. Well, now you say that after the meeting inside with the creditors had gone on for some time someone requested Mr. Hoffman and you to leave the room? A. That is correct.

Q. Was the assignee, Kolman, present at that meeting? A. No, he was not.

Q. Well, you were identified at the meeting as the auc-

1048 tioneer whom Mr. Hoffman had employed to conduct the sale, were you not? A. [illegible] Mr. Kolman employed, yes.

Q. Yes. Now you have attended a good many creditors' meetings in your experience? A. I have attended several.

Q. Isn't it quite customary, at least can you say that there was nothing unusual from your experience, about the creditors asking the assignee to leave the room while they discussed something amongst themselves? A. No, that part is not unusual.

Q. And that part of asking you and Hoffman to leave the room where the creditors were meeting in did not strike you at the time as being unusual, did it? A. No, it did

1049 not.

Q. And so Mr. Goldman came out after a while into the other room and talked with you and Hoffman? A. Yes, he talked with Mr. Hoffman.

Q. In your presence? A. That is right.

Q. You heard what was said, didn't you? A. Yes, I did.

Q. And in that talk was there anything at all said about a sale being had for one price which would be kept secret from the creditors, and another price being revealed to the creditors on the basis of which the money would be

1050 divided among them? A. No, there wasn't any specification as to prices one way or the other.

Q. And there was no mention of there being two prices: One a secret price and one a price that was open and revealed, was there? A. No, I don't believe there was.

Q. Now your recollection is clear of that conversation, isn't it; fairly clear? A. Pretty clear.

Q. And isn't it a fact that not only during the meeting inside but during the talk outside the creditors and Mr. Goldman were proposing and were urging upon Hoffman and upon you that the creditors be given a net of 40 per cent by way of a bulk sale or a private sale? A. I don't

recall the specified percentages but they were urging a 1051
settlement by means of a bulk sale.

Q. And they were, were they not, objecting to the expense of a public sale under the assignment proceedings? A. That's correct.

Q. With the attendant delay? A. That's right.

Q. Didn't they say it was a small matter and that they ought to get the best price they could, a fair price, and divide it up with the least possible expense and get their money? A. That was the substance of it.

Q. Instead of waiting for this accounting and all the necessary delay attendant upon an assignment proceeding? 1052
A. That's right.

Q. Your experience has taught you that there is a consequent and necessary delay in connection with assignment proceedings? A. Of course.

Q. And bulk sales usually result in much earlier dividends to the creditors? A. That's true.

Q. And no one disputed those facts there at that conference, did they? A. No, they didn't.

Q. So that the effort was to reach a figure, if I may summarize what I understand you to say, was to reach a percentage figure that the creditors would get net to themselves and which would leave a balance which could go for 1053
administration expenses, that is, it would pay you for what you had done and pay the lawyers something and the assignees something? A. Well, that's true, as administration expenses; yes.

Q. And to pay the lawyers something? A. Yes.

Q. And Goldman thought that he should receive something as well as Hoffman, didn't he; at least he so expressed himself? A. Well, he expressed himself as to being desirous of earning a fee, yes. In that manner, that he would get a fee and Kandell would get a fee out of it and we would get our fees just the same.

1054 Q. In other words, the fees weren't to be large or were to be secret or were to be divided up by reason of some secret price to be obtained from some purchaser, was there? A. There wasn't any necessary specification as to prices or amounts to be divided or anything else.

Q. And whereas there had been talk earlier that the creditors might not get $10, some of them, or 10 cents on the dollar if Hoffman went through with this plan, that if they could agree on some fair amount for the creditors which would leave something for everybody to take care of you and the lawyers and so forth, that that was the expeditious and the fair and the best way to handle it?
1055 A. That was the opinion voiced, yes.

Q. Now is that the sum and substance, the real, honest substance of the whole talk inside and outside of the room at all times? A. Yes, I believe that would be.

Q. Nothing there that you objected to; nothing occurred in your presence that you resented or thought was dishonest, was there? A. No. At that point I can't say so.

Q. And when they got down before Judge Coxe you were there, weren't you? A. That's right.

Q. At that time Hoffman told Judge Coxe that Goldman was trying to stop the assignment sale and interfere with the progress of the assignment proceedings, didn't he? A.
1056 Mr. Hoffman went through the entire thing from beginning to end—I believe it was testified to here; he had previously, all the way down the line, regarding Mr. Goldman and the meeting and so on, went all through it.

Q. Yes, but he did not tell Judge Coxe at that time that there was any secret price, did he? A. I don't know whether he said anything about a secret price.

Q. No. He did say that Goldman was trying to chisel in on his assignment proceeding, didn't he, in substance? A. Something like that, yes.

Q. And did you say anything before Judge Coxe? A. No, sir. 1057

Q. And were you over in Schulman's office when Goldman came in and told Hoffman that he lied about him trying to chisel in on the assignment proceedings? A. No, sir, I wasn't there.

Q. Did you ever hear Goldman at any time or place say anything to the effect different from his trying to do the best for the creditors? A. I did not.

Q. Now, in the telephone call Goldman said that he did not have anything to do with the matter. That was the bankruptcy? A. That is what he told me over the phone.

Q. Goldman wasn't at the bankruptcy hearing, was he? 1058
A. No, he wasn't.

Q. Do you recall whether he said that his brother Teddy might have had something to do with that but not he personally? A. No, I do not.

Q. Just one other question. Auctioneer's commissions for services, such as you were to perform, are usually 10 per cent, aren't they? A. Yes, sir.

Q. And that was your arrangement with Hoffman from the beginning, wasn't it? A. That is correct.

Q. In connection with the Hymowitz matter? A. That's right.

Mr. Corbin: That is all. 1059

Cross examination by Mr. Fielding:

Q. You were present all through the discussion before Judge Coxe? A. I was.

Q. And besides Mr. Schulman, Mr. Hoffman, there were two creditors represented by Mr. Schulman present, weren't there? A. I believe there were.

Q. Now do you remember what Schulman told Judge Coxe in support of his application to stay the sale? A. Not exactly, but —

1060 Q. I don't mean exactly. A. (Continued) That he had represented these two creditors for several years in the past and that they wanted the sale stopped in this matter, and that he filed a petition of their claim.

Q. And Judge Coxe, to be perfectly sure, knowing the creditors were present, that that was the attitude of creditors, interrogated the creditors themselves, did he not? A. That's right.

Q. And what did each of these creditors tell Judge Coxe? A. That they didn't want the sale to take place.

Q. They didn't want the proceedings to go along under Hoffman? A. That's right.

1061 Q. They didn't want any sale under an assignment? A. That is correct.

Q. Is that correct? A. That is correct.

Q. And did Judge Coxe then say that he would bow to the creditors' wishes, that they were the people who own the estate and they were the ones to be consulted? A. He did.

Mr. Fielding: That is all.

Cross examination by Mr. Mintzer:

Q. Mr. Wishbow, did you have any conversations with 1062 Kandell during the pendency of the Hymowitz case? A. I don't believe I did.

Q. The Judge asked you before whether Mr. Kandell was present in the room. Do you or do you not mean the room where all the creditors were present? A. Yes, that is right.

Q. About how many people were there at that time, altogether? A. Well, about half a dozen of us, I should say.

Q. And this talk whether the creditors could realize $10 on their claims or not took place in that room where

all the people were present? A. Yes, at the very beginning of the meeting. 1063

Mr. Mintzer: That is all.

By Mr. Corbin:

Q. There has been some talk here, Mr. Wishbow, to the effect that the $1500 figure fixed in the petition of Mr. Kolman for the bond and for the sale came from you as a reasonable estimate of the value? A. Yes.

Q. Of the stock? A. That was my suggestion.

Mr. Corbin: That is all.

The Court: Any redirect? 1064

Mr. Walsh: I am going to ask your Honor for a little latitude at this time.

Redirect examination by Mr. Walsh:

Q. Do you know what a flip-flop is?

Mr. Corbin: Well, is he talking about the circus now?

Mr. Walsh: Yes, a turn-about.

Mr. Corbin: Well, it sounds like counsellor is turning about.

The Court: Very well. Do you object to that question? 1065

Mr. Corbin: Yes.

The Court: I will sustain the objection, so that you may proceed.

Q. On your direct examination, if your redirect is correct, why did you tell Mr. Goldman that he was lying when you spoke to him over the telephone when you recounted to him the conversation that was had at the first creditors' meeting? A. Because I was present at the time the bulk

1066 sale and private sale were discussed out in that hallway, and that it was his suggestion that Mr. Hoffman follow along those lines.

Q. And what lines were those? A. To go through with this private sale, obtain the buyer.

Q. And after they got the money in this private sale, how was that money to be distributed? A. Well, creditors were going to get a settlement and in addition thereto, we were going to get fees out of it.

Q. All from this one private sale? A. From the entire sale, yes.

Q. Were the creditors going to be told exactly the amount
1067 of money that they obtained at this private sale? A. That wasn't mentioned.

Q. Well, you were present; you understand the English language, don't you, Mr. Wishbow? A. I do.

Q. And was it usual for Mr. Goldman to come out after he asked you to come outside of the room and make such a proposition to you?

Mr. Fielding: I object to that question.

The Court: I will overrule the objection.

Q. Was that the usual thing to do or an unusual thing
1068 to do? A. Well, I can't say that it was unusual when they want you to follow along some lines that they suggest you take. That part—

Q. Did you consider it a legal way of doing things? A. A legal way?

Mr. Fielding: I object to that as calling for a conclusion of the witness.

The Court: Yes. I will sustain the objection to that.

Q. Did you say you would go along with Mr. Goldman? A. I ventured no opinion at all throughout.

Q. You just stayed there and listened? A. That is right. 1069

Q. Do you remember on direct I asked you whether or not you did not appear at Mr. Hoffman's office and was there when he dictated certain affidavits which were going to be submitted to the Court in order to have the sale proceed? A. Yes. He was—he had them. I don't recall just when that was.

Q. Now I show you this affidavit and ask you whether or not you recognize having read that over (handing witness). It isn't signed. Do you remember being up in Mr. Hoffman's office and is that the affidavit that you testified on direct that was signed or that was prepared at that occasion? A. Yes. I believe this—well, there was 1070 an affidavit that I did sign setting forth the manner of disbursements.

Q. Well, I am asking you now whether or not you remember being in Mr. Hoffman's office and being there when that affidavit I now show you was prepared. A. I was in his office at the time he prepared the affidavits regarding this, yes.

Q. And you also were there when he prepared his own affidavit, were you not? A. I wasn't there at the actual preparation. I mean he had called me down and told me that he was preparing affidavits, and as a matter of fact, 1071 I brought down the disbursements that I had rendered up to that time for the purpose of drawing my affidavit.

Q. And you read the affidavits over too, didn't you? A. I believe I saw his affidavit.

Mr. Walsh: Mark this for identification.

(Marked Government's Exhibit 16 for identification.)

Q. As a matter of fact, this affidavit which I have just

72 shown you and at which you say you were present is—and correct me if I don't read correctly—

Mr. Corbin: I object to that as immaterial, incompetent and irrelevant. In the first place, he hasn't said that he was there when it was prepared.

Mr. Walsh: He testified he read it.

Mr. Corbin: Even if he did it wouldn't be competent to read it; in the third place, the document hasn't been offered in evidence.

Mr. Walsh: I have marked it for identification.

Mr. Corbin: So I am going to object to it, and
73 in the fourth place, the paper isn't signed anyway, apparently. We have never seen it.

The Court: Gentlemen, I believe at this point I ought to determine the competency of this examination. I am going to hear it out of the presence. I will let the jury retire for a few minutes. If it is competent I will submit it in the presence of the jury.

(The jury left the courtroom.)

The Court: Let the record show, Mr. Stenographer, that the examination now is being taken out of the presence and hearing of the jury.

74 Mr. Walsh: If your Honor please, I respectfully submit that on direct examination this witness testified one way and on redirect he absolutely turned around the other way.

The Court: Now that is the reason—

Mr. Walsh: And I am surprised.

The Court: —I let the jury retire.

Mr. Walsh: I understand.

The Court: You may proceed with the examination, and if that be true or if you claim surprise at his testimony, I will let you cross examine him. I will determine it after I hear you.

The Witness: Mr. Walsh, may I see the copies of the affidavits that were in my file, copies given to me by Mr. Hoffman? 1075

Q. Yes. Well, I will show you them in a moment. May I ask you this while we are waiting for that: Am I correct when I said—when I show you this: "The deponent has read the affidavit of Robert Hoffman which is hereto annexed. I have read the statements contained therein which refer to a certain meeting of the creditors held at the office of the Dry Goods Furnishing Association at 175 Fifth Avenue, New York City, on March 25, 1937, and corroborate same insofar as it relates to me, especially as to the conversations had between Mr. Hoffman and Mr. Goldman in my presence and also in respect to the conversations had amongst Mr. Kandell, Philip Cohen, Mr. Samuel Goldstein, Mr. Morton Goldman of the firm of Goldman, Malter & Goldman, Mr. A. Kreiselman, Mr. Schwartz of the firm of Schwartz & Zuckerman and Mr. Ribach of the firm of Ribach & Mantis." 1076

Now does that refresh your recollection that you did appear and read the affidavits which Mr. Hoffman had prepared at the time and corroborated what Mr. Hoffman had said in his affidavit when he was preparing them in order to knock out the petition in bankruptcy which had been filed on that same day? 1077

Mr. Corbin: Now just a moment. I object to it. The paper is an unsigned paper apparently, not that that in itself would make it void as something from which recollection can be refreshed, but the testimony of the witness so far is that it was not prepared in his presence, that Hoffman prepared it and phoned for him to come over, so that the language which was read obviously is not the language of the witness. Therefore, I see in what he has read, in

1078 connection with the surrounding facts of its preparation, nothing which can properly be used in this examination by the Government.

The Court: I will overrule the objection.

Mr. Corbin: Exception.

Q. Is that a fact? A. May I refer to my—

Mr. Walsh: Will you read the question—

Q. I will give you that in a second. A. Well, in order to answer your question, may I refer to my copies?

1079 Q. Well, will you answer the question that I have asked you first? A. Well, that will enable me to answer it.

Q. Does that refresh your recollection concerning the fact that you were there on April the 3rd, 1937, when these affidavits were prepared? A. I was there on April 3, 1937, but I don't recall whether I was there when these affidavits were prepared or whether they were prepared before I came there.

Q. But is it true that you did, even if you weren't there when all of the affidavits were prepared, read the affidavit which was prepared by Mr. Hoffman and in which you said that you corroborated everything that was said by Mr.

1080 Hoffman on that occasion?

Mr. Corbin: Now just a moment. That is what I object to. The witness did not say—

Mr. Walsh: Well, I am asking him.

Mr. Corbin: And this paper does not purport to state that he corroborated everything that Mr. Hoffman said, because this is the paper that the witness did not sign. Therefore, it is not a statement of the witness in any record.

The Court: I will overrule the objection. If it is not he can so testify. As it is, he is asking him.

as I understand the question, if that is so. If it is not, he can so state. Of course if he does not remember he can so state. Whatever he remembers the facts, he will testify to them. I will overrule the objection and let him answer. 1081

A. I don't recall whether that is the affidavit or not.

Q. Well, let me ask you this: Did you read over the affidavit that Mr. Hoffman had prepared on that occasion, on April the 3rd? A. I probably did.

Mr. Corbin: I object to that as already answered.

Q. Did you read over the affidavit? A. Mr. Hoffman's affidavit? 1082

Q. Yes. A. Yes, I probably did.

Q. And did you corroborate everything that was said in Mr. Hoffman's affidavit?

Mr. Corbin: I object to that as calling for a conclusion, not for any fact, not for any conversation.

The Court: I sustain the objection.

Q. Did you on that occasion, after reading over the affidavit of Mr. Hoffman, did that recall to your mind that that which Mr. Hoffman had said in his affidavit had transpired and taken place on that occasion on March 25th? 1083

Mr. Corbin: I object to that as leading and suggestive.

The Court: I will overrule the objection.

A. I believe it referred to the meeting on March 25th.

Q. And that refreshed your recollection? A. Yes, probably did.

Q. Is that correct? A. That is correct.

Mr. Walsh: I will have this marked for identifi-

cation, Mr. Corbin, so that there won't be any question about it.

(Marked Government's Exhibit 17 for identification.)

Mr. Corbin: What is that that you marked 17?

Mr. Walsh: This is the affidavit of Samuel Kofman.

Mr. Corbin: Verified when, Mr. Walsh?

Mr. Walsh: Just a second—and the affidavit of Robert Hoffman, consisting of 13 pages, unverified, and an affidavit unverified of Gabriel Wishbow, which is what I am speaking about.

Mr. Corbin: Are any of those signed?

Mr. Walsh: None of them are signed. I am just asking him now if this refreshes his recollection.

Q. And there is no question now that you were there and you read the affidavits as prepared by Mr. Hoffman?

Mr. Corbin: Now just a moment. I couldn't even hear that question. But if I understood it, it was that there was no question—

Mr. Walsh: The fact that he was there and read the affidavit of Mr. Hoffman.

Mr. Corbin: I thought you said that there was no question that he was there when they were prepared.

Mr. Walsh: No, I didn't say that.

Mr. Corbin: Well, that is what I thought I heard.

Mr. Walsh: I will stand back here so that you will hear better.

Mr. Mintzer: May I object to the use of the word "affidavit". It isn't an affidavit. It is neither signed nor verified.

The Court: Very well. I will sustain the objection 1087
to that. It will be referred to as a document.

Mr. Walsh: Call it p-a-p-e-r, paper.

Q. You remember, Mr. Wishbow, reading the paper prepared by Mr. Hoffman, in which he states: "I respectfully call the attention of the Court that the assignor Paul Hymowitz is now an inmate of the penitentiary at Riker's Island. He was sentenced and confined to jail on or about March 18, 1937." Do you remember that? A. I know the facts as to Paul Hymowitz I would say, without coming out of that. I know the story of the case.

Q. That is true? A. Yes, sir. 1088

Q. And then again "Under the circumstances it was the desire of Paul Hymowitz to see that his creditors receive the utmost and maximum from the estate." You remember that? A. Yes, sir.

The Court: Mr. Walsh, I allowed the jury to retire for the purpose of determining if any of you were taken by surprise and whether or not there was such a variance between his testimony and what you understood from him prior to his testifying, so as to give latitude on cross-examination. Wherein do you claim you are entitled to cross-examination 1089
of this witness?

Mr. Walsh: He testified on cross-examination that he was going to be paid out of the general administration expenses.

The Witness: I beg your pardon. I didn't refer to that.

Mr. Walsh: On cross-examination he did, if your Honor please. He also said about $10 going to creditors. There was a discussion concerning the $10, that is all the creditors would get; whereas, on direct, he testified the $10 was going to be given to

the three creditors in the room there for the purpose of alleviating their feelings. They had heard that Mr. Hoffman intended to give them 80 percent, and on cross-examination he said: Was something said about all the creditors that they were going to get $10? And that is all.

Mr. Mintzer: I submit there was no testimony on direct examination of Mr. Wishbow "for the purpose of alleviating their feelings". That was what this witness testified to Mr. Corbin.

Mr. Walsh: And turning his testimony diametrically to what he testified on direct.

The Witness: I beg your pardon, Mr. Corbin referred to what came up at the meeting.

Mr. Walsh: I said that was preliminary, prior.

The Witness: You did.

The Court: I recall his testimony on direct examination and I am almost sure that a statement was made that those creditors in there would be given $10 but not all of them getting $10 was not asked, nor was he asked if that applied to all creditors. He testified on direct examination so far as he recalled he heard no conversation out in the hall or any other place that there was to be a secret price to be paid for the goods different from the one that was to be actually paid out. I was watching his testimony closely and that was his testimony. So I do not think there is a great amount of variance on direct and his cross examination. His cross examination has gone into fields somewhat different from those on the direct examination.

Mr. Walsh: If your Honor please, I was ready and prepared to ask him—

The Court: You can proceed a little further in the absence of the jury.

Of course, the rule of law is if you are taken by surprise on a point that you are not supposed to know anything different about it, if there were such a variance shown, a wilful change, then you are entitled to read to your witness, but if on cross examination matters favorable to a party, that doesn't give you the right to contradict him unless there is a surprise about matters which you could not have anticipated that his testimony would have been as it is but, on the contrary, from your conferences with him or prior statements with him, you had a right to rely that his testimony would be different from what it is. 1093 1094

Mr. Walsh: The reason that I claim surprise was that he testified in answer to Mr. Corbin's questions that the $10 that was mentioned when they, Hoffman, Goldman and himself, were present, not to be given to the creditors as their final settlement.

The Witness: That is right.

Mr. Walsh: And that was discussed; whereas, on direct examination he said that those $10 was going to be given out to the creditors present at that time, because they had heard this was a big estate and they expected to get quite a bit of money.

The Court: It is my recollection he testified to that on direct examination. 1095

Mr. Walsh: That is correct. Now on cross examination he changes his testimony in what point—

The Court: Have you a transcript of the testimony?

Mr. Corbin: We have a transcript of yesterday's testimony.

The Court: My recollection is that it was in response to a question by the District Attorney that he answered the creditors there would get $10, to say nothing about it, or something to that effect.

1096 Mr. Walsh: That was today.

The Court: Did you testify to that on direct examination?

The Witness: Yes, sir. I believed that the creditors would get $10 a piece, those creditors who were present.

Q. And what was the purpose of it? A. The purpose was not expressed. I said Mr. Hoffman raised the question. I had alleged certain facts regarding the assets and liabilities and percentages, that is where it came up, that is the way it was.

1097 Q. What did Mr. Goldman say? A. There was nothing labeled about it. That was in response to Mr. Hoffman while this is going through on a percentage, and just the way that they would get $10 a piece. That is the time.

The Court: I am going to rule you cannot cross examine the witness, but you can go back on redirect.

Let the record show that this testimony has been taken up to this time in the absence of the jury.

Bring the jury in now.

(The jury returned to the courtroom at 3:25 p. m.)

1098 By Mr. Walsh:

Q. Mr. Wishbow, on redirect examination you were asked by Mr. Corbin concerning the $10 that was going to be given to the creditors, is that correct? A. Well—

Q. He asked you that, did he?

Mr. Corbin: On cross examination, not redirect.

A. I believe Mr. Corbin, to the best of my recollection, said, Wasn't there a talk about $10, or something, that the creditors would say they might or might not get. I don't believe

that was the $10. Wasn't there talk at the meeting about creditors getting $5 or $10? 1099

Q. Was there such a talk? A. I said at the preliminary meeting under the assignment; they didn't get very much out of it.

Q. Now specifically confine yourself to the $10 that entered into the conversation, and if my memory serves me correctly, that you were present, Mr. Kandell, and Mr. Goldman and Mr. Hoffman was also present, that is after the meeting had adjourned. A. That is right.

Q. Now what was that $10 for?

Mr. Corbin: I object to that. 1100

The Court: I will sustain the objection.

Q. Was anything said about the $10 at that time? A. Yes, sir.

Q. Will you tell us fully what was said? A. Mr. Hoffman said this is for doing these things, just like that. What about the information I gave as to assets nd liabilities, or the expression a great dividend I might pay out of this thing, and at that time something was said about these creditors getting $10 a piece.

Q. Which creditors? A. The three creditors present at the meeting.

Q. Was anything said as to what the purpose was that 1101
these creditors were going to get $10 for? A. I don't think anything was expressly said.

Q. Now going back to the conversation between Mr. Hoffman and Mr. Morton Goldman, after the meeting of the creditors on March 25, 1937, you said you were going to be paid on that occasion, or did anybody say they were going to take care of you? A. Yes, sir.

Q. Who said that? A. Mr. Goldman.

Q. Now who else was going to be taken care of? A. Mr. Kandell, Mr. Hoffman, myself and Mr. Goldman, four of us.

1102 Q. And how were you going to be taken care of, how were those five individuals going to be taken care of? A. They were going to raise a fund a sufficient amount for creditors, then another fund out of which we were to be paid.

Q. If there was going to be two separate funds, that is all I am asking you? A. Two funds.

Q. Two separate funds, one for creditors and one for you? A. Yes, sir.

Q. And the others that were going to participate? A. Yes, sir.

1103 Recross examination by Mr. Corbin:

Q. One total fund that was received from the assets? A. One total fund.

Q. The money had to come from somewhere, and it was coming from the assets? A. Yes, sir, from the purchaser.

Q. What they were trying to figure out was what would be a fair percentage——

Mr. Walsh: I object to that as calling for a conclusion.

The Court: Yes. Objection sustained.

1104 Q. Wasn't the conversation to the effect that they would figure out what percentage the creditors ought reasonably to have? A. The conversation that was going on then was that a settlement—

Mr. Walsh: May I have what was the specific time and then we won't get into any difficulty any more. Where was this conversation, and between whom?

The Court: You can take him back on redirect to find that out. I cannot direct counsel how to ask his questions.

Q. The talk was just as you told me when I asked you before, when you testified here a few minutes ago, you were telling the truth? A. Yes, sir. 1105

Q. You understood my inquiries? A. Yes, sir.

Q. And what the substance of the talk was they were trying to figure out—

Mr. Walsh: I object to the "substance".

Q. Did you tell me the truth on redirect examination before the jury was excused?

Mr. Walsh: Cross examination, Mr. Corbin.

1106

Q. Cross examination, that is right. A. I did.

Q. Just before the jury went out? A. I did.

Q. Everything you told me was right? A. Yes, sir.

By Mr. Walsh:

Q. And everything you told me when I asked you about the two separate funds was true also? A. Yes, sir.

Q. And about the $10 being given to the creditors to keep their mouths shut?

Mr. Corbin: Did you hear that before today?

The Witness: No, sir.

Mr. Walsh: What was the purpose? 1107

The Court: One at a time. Mr. Corbin is examining the witness.

Mr. Walsh: I am sorry.

By Mr. Corbin:

Q. Was anything said in words or substance at that time about keeping their mouths shut? A. I don't recall that.

Q. Those words, so far as you are concerned and so far as your hearing is concerned, came from Mr. Walsh's mouth right now? A. Yes, sir.

1108 Mr. Corbin: That is all.

The Court: Any further cross examination?

Mr. Walsh: I am just going to ask him one more question.

The Court: Very well.

Q. In these various creditors' meetings much is left unsaid and it is all by gestures, isn't it?

Mr. Corbin: I object.

The Court: Objection sustained.

Stand aside. Witness excused.

1109 ———

ALEXANDER ROTHLEIN, called as a witness on behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Rothlein, what is your occupation? A. At the present time I am interested in a retail establishment.

Q. What did you do from the early part of 1937 until the latter part of 1937? A. I was practicing public accounting.

Q. And where were you practicing public accounting?

1110 A. At my office, 175 Fifth Avenue.

Q. And was that at the Dry Goods & Furnishings Association? A. Yes, sir.

Q. And do you know Mr. Kandell? A. I do.

Q. Do you stand in any relationship to Mr. Kandell? A. Yes, sir.

Q. What is that relationship? A. My brother-in-law.

Q. Now I show you Government's Exhibit 14-B in evidence in which your name appears here. A. Rothlein. Is that not your name? A. Yes, sir, that is right.

Q. It is a bill of sale, unsigned. I believe, and by it Paul Hymowitz purports to sell merchandise and other

matters to one A. Rothlein. Did you have anything to do with this bill of sale? A. No. 1111

Q. Did you ever have any conversation with anybody about that bill of sale? A. What do you mean?

Q. Well, did anybody ever speak to you about that bill of sale? A. Yes, sir, sure.

Q. Who spoke to you? A. My brother-in-law.

Q. What did he say to you? A. Well, I used to be in and out of the office occasionally at that time and when I was in the office he asked me—

Mr. Walsh: Keep your voice up. I cannot hear you so well. 1112

A. (continuing) At that time he asked me if it would be all right if I would allow him, to permit my name to be used in a purchase of merchandise and a bill of sale. He never mentioned the sum of money, for a buyer by the name of Louis Abramson, an actual buyer. That is all I know about this matter.

Q. What did you tell your brother-in-law, that is Mr. Kandell, when he asked you that? A. I said it was all right. He could use it.

Q. You allowed him to use your name? A. Yes, sir, I allowed him. 1113

Q. Did you ever intend to buy any merchandise by that bill of sale? A. No.

Mr. Schachner: That is all.

Cross examination by Mr. Mintzer:

Q. Did Mr. Kandell tell you that Mr. Abramson had told him that he did not want his own name to be used in the bill of sale? A. He did.

Mr. Mintzer: That is all.

1114 The Court: Any further questions?

(No response.)

The Court: Stand aside. Call Mr. Abramson.

Mr. Walsh: We will defer calling him for a while your Honor.

Mr. Schachner: Call Mr. Bodinger, please.

NATHANIEL BODINGER, called as a witness on behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

1115 Q. What is your occupation, Mr. Bodinger? A. I am a stenographer for the Federal Bureau of Investigation, United States Department of Justice.

Q. On April 7, 1937, were you in Room 1508 of the building 277 Broadway in the City of New York? A. I was.

Q. What did you do there? A. I was listening to certain conversations and taking notes.

Q. How were you listening to those conversations? A. By means of a listening device attached to a wall in the room and an amplifier.

Q. Where were the conversations taking place to which you listened? A. In the adjoining office.

1116 Q. And you made notes of what you heard? A. I did, that is right.

Q. Now do you remember who was speaking at the time you listened? A. Well, there were different persons speaking on different occasions.

Q. Could you identify the voices you heard on that occasion? A. At that time I probably could.

Mr. Fielding: Could or could not?

The Witness: Could. That is, I could identify some of them definitely.

Q. Whose voice could you identify definitely? A. Robert 1117
Hoffman.

Q. And did you hear any other voices? A. I did.

Q. Did you hear the people in the course of the conversation refer to each other by name? A. I did.

Q. What names were mentioned? A. Schulman and Goldman.

Q. Now could you more or less identify one voice as usually responding when being addressed as Schulman? A. I could.

Q. And could you identify another voice as being—by the way, how many voices were there? A. It seemed to me at the time that there were three at least. 1118

Q. And there is one voice still missing. You have identified more or less two up to now, haven't you? A. That is right.

Q. Can you tell us whether or not, have you any idea who the third voice was? A. Well, that was Goldman.

Q. Now you say you made notes. How did you make those notes? A. I used in taking notes a stenotype machine.

Mr. Schachner: I ask that these be marked for identification.

(Marked Government's Exhibits 18, 19, 20 and 21 for identification.)

1119

Q. I show you Government's Exhibits 18, 19, 20 and 21, marked for identification, and I ask you whether you find among these exhibits the original notes which you made on April 7, 1937? A. That is right.

Q. Which one of the exhibits is it? A. This one (showing).

Mr. Schachner: Let the record show that the witness identified Government's Exhibit 21 marked for identification as the notes made on April 7, 1937.

Mr. Corbin: Why don't you cut it short and get the transcript in. No objection.

120 Mr. Schachner: I offer these in evidence.

Mr. Corbin: When I say "no objection" I am not objecting to the form of the proof. I don't know what they contain, but my point is if we get the stenographic transcript we can read it and see what we are talking about.

The Court: At this time I will overrule the objection and let the original notes go in, and when they are read or the entire exhibits are read you can object at that time.

Mr. Corbin: I didn't mean to object. I meant to try to facilitate the offer.

121 (Marked Government's Exhibit 21-A for identification.)

Q. Mr. Bodinger, I show you Government's Exhibit 21-A marked for identification and I ask you whether this is a correct transcript, prepared by you of the original notes, which you made and which you just identified? A. That is so.

Mr. Schachner: I offer them in evidence.

Mr. Corbin: That is what we want to see.

(Mr. Schachner hands copies of papers to counsel.)

122 Mr. Fielding: Your Honor, perhaps if we could take a short recess now—

Mr. Schachner: May I suggest that your Honor does not take a short recess at this time. There are three more transcripts to come. May we go through the process of formal proof at once and then have all the objections together and that will shorten the matter?

The Court: Very well.

Q. Mr. Bodinger, were you also present in the same room on April 14, 1937? A. I was.

Q. And did you also listen to the conversations taking 1123
place, that is in the next room 1509, over a listening device attached to the wall? A. I did.

Q. And did you make any stenographic or stenotype notes of what you heard? A. That is so.

Q. Could you among these three exhibits identify your notes? A. Yes, sir, those are the ones (indicating).

Mr. Schachner: Let the record show that the witness identifies Exhibit 20 marked for identification, as his original notes made on April 14, 1937.

(Government's Exhibit 20 for identification received in evidence.) 1124

(Marked Government's Exhibit 20-A for identification.)

Q. Mr. Bodinger, I show you Government's Exhibit 20-A marked for identification and ask you whether that is a correct transcript prepared by you of original notes which you took on April 14, 1937, and which you just identified? A. It is.

Mr. Schachner: I offer them in evidence.

The Court: Show them to counsel.

(Mr. Schachner shows papers to counsel.) 1125

(Government's Exhibit 20-A for identification received in evidence.)

Mr. Walsh: They have copies, your Honor.

The Court: Very well.

Mr. Mintzer: I reserve the right to object to all of these exhibits on the ground that the defendant Kandell was not present at any of these meetings.

The Court: Very well. You may reserve your right.

1126 Q. Were you also present at a conversation on April 21st in the same room? A. I was.

Q. That is Room 1508, and you listened in on a conversation that took place in Room 1509? A. I did.

Q. And you again made stenotype notes, did you not? A. Yes, sir.

Q. Which are the stenotype notes? A. Exhibit 19 for identification.

Mr. Schachner: Let the record show that the witness identified his notes as Government's Exhibit 19 for identification, as his original notes of that

1127 occasion.

(Government's Exhibit 19 for identification received in evidence.)

(Marked Government's Exhibit 19-A for identification.)

Q. I show you Government's Exhibit 19-A for identification and ask you whether that is a correct transcript, prepared by you of the notes which you took on April 21, 1937? A. It is.

Mr. Schachner: I offer it in evidence.

1128

(Government's Exhibit 19-A for identification received in evidence.)

Q. You were again present in Room 1508 and listened over this device to conversations which took place in Room 1509 on April 26, 1937? A. I was.

Q. You again made stenotype notes, did you not? A. That is right.

Q. Government's Exhibit 18 marked for identification, are these your stenotype notes? A. They are.

(Government's Exhibit 18 for identification received in evidence.) 1129

(Marked Government's Exhibit 18-A for identification.)

Q. I show you Government's Exhibit 18-A marked for identification, and ask you whether that is a correct transcript of the notes which you took on April 26, 1937, in Room 1508? A. It is.

Mr. Schachner: I offer these in evidence.

(Government's Exhibit 21-A for identification received in evidence.) 1130

The Court: Marked in evidence subject to your objection. I am going to hear you on all of them later.

Mr. Fielding: That is what I understood, your Honor.

Mr. Schachner: Does your Honor desire to inspect these exhibits now?

The Court: Do you have any other formal questions at this time?

Mr. Schachner: No.

The Court: We will take a few minutes' recess while you read these. 1131

(Short recess.)

Mr. Corbin: Preliminary to an objection, may I examine the witness?

The Court: Yes.

Preliminary Cross by Mr. Corbin:

Q. Mr. Bodinger, you sat in 1508 that afternoon of April 7 with earphones and took down on this machine of yours what you heard as best you could? A. Yes.

1132 Q. There were a number of occasions, were there not, when you couldn't get what was said, so you did not take it down? A. No, not that I couldn't get it, but that I couldn't hear it. That is, there were noises, interruptions; voices were too low.

Q. Well, when I say you couldn't get it, you couldn't get it adequately to record it? A. Yes.

Q. And that occurred also, that is, your inability to get it occurred also when two or three of them were talking at the same time or trying to? A. That's right.

Q. And that occurred on several occasions? A. Yes.

1133 Q. Do you remember when this new voice came in on that day, which you think was Mr. Goldman, there was some pretty heated talk at the early part of the time after he entered; do you recall that? A. That's right.

Q. And there was some swearing between him and Hoffman, wasn't there? A. There probably was.

Q. Some of that you got and some you did not; right? A. Whatever I got is in there.

Q. Yes. But there was some you didn't get? A. I have indicated that they all spoke at one time and that I couldn't get.

1134 Q. Now let me ask you this: With regard to all of the testimony that you transcribed, there is no mention in this transcription of Mr. Goldman being present at any occasion except April 7th. Do you recall that? A. Yes.

Q. And that he was only there during a part of the time on that day? A. Yes.

Q. I show you 21-A for identification—

The Court: 21-A is April 7th.

Mr. Schachner: Yes.

Q. I show you this copy of Government's Exhibit 21-A for identification. Will you follow through from the first page and tell us on what page your notes indicate that Mr.

Goldman first appeared at that conference? A. Page 5. 1135

Q. About in the middle of the page? A. That's right.

Q. Where his name is listed in the list of names in the lefthand margin? A. That's right.

Q. And then will you continue to run through there and tell us if he apparently was present until a point on page 16, where he apparently left the conference? A. That's right.

Q. And was not there after that? A. Yes.

Q. And did not thereafter return? A. That is right.

Q. It is a pretty difficult job recording talk of that kind, isn't it? A. More or less.

1136

Mr. Walsh: If your Honor please, this is improper on a preliminary hearing. I think the purpose of these questions is a proper subject for cross examination. Rather, I thought he was going into some other subject for the preliminary hearing.

The Court: Well, I can see that it might have some relevancy on a preliminary hearing. I will overrule the objection.

Q. This represents your best effort in that regard? A. It does.

Mr. Corbin: That is all. 1137

Now, Judge, so far as the defendant Morton Goldman is concerned, he has no objection to the portion of Exhibit 21-A comprising the presence or apparent presence of Mr. Morton Goldman in that room, namely, from page 5 to page 16. As to the balance of it, what comes before and after his departure, he objects to it as hearsay and incompetent. So far as the defendant Theodore Goldman, whom I also represent, is concerned, he objects to the entire offer as hearsay and incompetent as to him.

The Court: On those grounds, simply as to hear-

1138. say and incompetency—are those the only grounds upon which you object, Mr. Corbin?

Mr. Corbin: Well, I am not going to question, with the possibility of some human error, frailty, I am not going to question the transcript, at least at this time. I don't question it so far as Morton Goldman is concerned at the time he was there. As to the balance, I do not feel that it is competent at all as against him.

The Court: I am going to overrule your objection upon the ground that it is hearsay. There are parts of it that probably might be considered as irrelevant,
1139 not throwing light one way or the other, and if specific objection is made to any part of that, specifically pointing it out, I might probably sustain an objection to parts of the conversation. Of course ordinarily when a conversation is offered in evidence the entire conversation should go in, and will go in, in this instance, unless the defendants object specifically to some part of it. There is part of the transcript that is certainly competent. Any statement against interest is always competent and I think sufficient showing has been made here as to the gist of the crime at this time, and statements so far as interest is con-
1140 cerned would be competent against all defendant except as to Kandell. And if an objection is made by Kandell's attorney, I would reserve ruling upon an objection at this time as to him.

So upon the ground that you specifically made of hearsay, I will overrule the objection, and with the remarks I have made with reference to certain parts of the conversation there, that they seem to throw no light one way or the other, I do not see where it is harmful or where it is beneficial, and unless it is specifically requested that that part of the transcript

which is really immaterial and irrelevant as throwing no light one way or the other be not considered, why, then I will overrule the objection as a whole. 1141

Mr. Corbin: Then when the time comes that any part of the balance is attempted to be read I may then raise it?

The Court: Very well. I will rule upon it at that time.

Mr. Corbin: Specifically at that time. I agree with your Honor that there is a great deal of it that does not help or hurt either side. It doesn't matter at all, but so far as the part where Morton Goldman was there, I haven't any objection to that at all. 1142

Mr Mintzer: So far as the defendant Kandell is concerned, if your Honor please, I reserved the right heretofore to object. I make my objection. Your Honor has indicated that you are going to reserve ruling.

The Court: Yes, I will reserve ruling upon it as to the defendant Kandell and cover it by proper instruction at the conclusion of the testimony or prior thereto, if it becomes necessary.

Mr. Fielding: And for the defendant Schulman, it having been testified that these transcripts prepared by a method of putting a detectophone on the wall, the outside wall of Schulman's room without his knowledge, I object to the testimony on the ground that it is incompetent under the decisions of the Supreme Court of the United States. 1143

The Court: I will overrule the objection upon that ground.

Mr. Fielding: Exception; and I reserve my rights to object as the opportunity presents itself as to specific parts of the transcript which will be offered in evidence.

1144 The Court: Yes. Very well, you may do that, and what I said with reference to my ruling upon the objection by Mr. Corbin will apply with reference to Mr. Schulman also.

Mr. Corbin: And may it be the other way too, Judge? I should, in the interests of my clients, preserve my position with regard to the illegal search and seizure feature of the matter that has had your attention before. I want to preserve it as I did before for my clients.

The Court: Very well. You may make your objection upon that ground and I will overrule the ob-
1145 jection made upon that ground.

Mr. Corbin: Thank you, your Honor.

Mr. Mintzer: That applies to all defendants?

The Court: Yes.

Mr. Walsh: If your Honor please, we all admit that there are many parts in the transcript that are irrelevant. That is the reason we furnished all defense counsel with copies of it so we could save time and as we go along, if they will indicate what they consider irrelevant, we will be glad to dispense with the testimony so far as that is concerned.

The Court: Yes, very well.

1146 Mr. Walsh: Judge, if you would like to follow it for your own convenience—

The Court: I think I would rather listen.

Direct examination continued by Mr. Schachner:

Q. Mr. Bodinger, do you have any independent recollection except what you put down in these notes of what was said? A. No, I don't.

Q. I ask you to read those notes to the jury.

Mr. Schachner: That is, the witness is now reading Government's Exhibit 21-A. 1147

Q. Before you start reading that, I would like to ask you a few more questions, just to clarify what you are reading. Now on that exhibit there are certain names mentioned. Whenever somebody seems to say something, there is a name as to who said that, isn't there? A. That is right.

Q. Now can you tell the Court and the jury whether you are sure that the person specified by you as having said something was actually the person that said it? A. I can't be positive in every instance. In most instances I can. I can be positive that what I have here was said. 1148

Q. Tell me, can you be more sure of what was said in the beginning or at the end? A. Well, I can be more sure at the end.

Q. And why is that? A. Well, having heard them repeatedly more or less, I would begin to distinguish more clearly.

Q. You may proceed with the reading. A. (Reading):

"The proceeds of that sale now goes to me * * * Economy Sales Co., Fifth Avenue, New York. One of their traveling men. So that's * * * Endicott-Johnson went over to the place and there was six or seven other people that Cohen sent down. Then I thought this. I mean it, serious. I 1149
thought it was a question of looking over the estate to see that everything was all right for the assignee. Then let the thing go through in a normal way and yet looking after the interest of the creditors."

Mr. Fielding: I don't like to interrupt, but would you note that you don't know who is talking?

The Witness: In that instance that was the opening of what I started hearing, so I couldn't tell who it was.

1150 A. (Continued) Hoffman: 'In spite of the fact * * * right off the bat it was a question of trying to give the creditors every goddam cent * * * comes along with 40 per cent to creditors. Let me take another thing looking * * * .

"Schulman: All your conscienciousness won't help you anything. I'll tell you why * * * an amount equal to what the federal court would allow. That's all he could charge us. What the bankruptcy court would show.

"Hoffman: The auctioneer charges ten per cent but the other five didn't go to you personally. Will
1151 Endicott-Johnson give you any * * * The family of this Bill said that they wanted the creditors satisfied: that they are doing business there about twenty years. Maybe after Hymowitz gets out of jail he may want to go out of the business. Maybe he's looking for parole. After all, there is nothing he did, and he wants to go into business, and the creditors get 78 per cent or close to the full amount, won't they look with a better spirit on an amount like that? * * * it's a practical proposition. You're a crook so long as you don't give money, whether it's 90 per cent or 20 per cent. This is the psychology of it.
1152 As far as you are concerned, your man will be better off by getting a release, having it black on white from all creditors. But don't you see how the difference in the amount between the liability and the amount that the creditors would get under the assignment would be so small that it wouldn't make a hell of a lot of difference. Eventually he'd make up the difference * * * It would be about five or six hundred.

"Schulman: I want to tell you something. Maybe to you five or six hundred dollars don't make any difference, but to this guy over here, when he comes out broke * * *

"Hoffman: But you always know that if the creditors got 70 or 80 per cent, the majority of the reputable ones wouldn't press him for the balance. 1153

"Schulman: Not a goddam chance. They'd let him ride for that, and I've seen it in many other cases. He'll pay everything that he has. These creditors saw fit not to go after him. I know several * * *

"Hoffman: They will give it to him if he gets proper endorsement.

"Schulman: Not only that, the man still has debts of five hundred or one thousand against him. He will never get a loan * * * I know my end of it. I'll tell you why I know a little bit better than you. 1154

"Hoffman: Did you see Goldman the other day, did you speak with him?

"Schulman: For an hour and twenty minutes.

"Hoffman: You didn't speak to him at all about it?"

Schulman said something which wasn't to be heard.

"Hoffman: What does he figure to go through?

"Schulman: As far as I'm concerned * * *

"Hoffman: We can tell creditors that after the order was sent out, we are disposing of the stock in the most expeditious manner rather than incur all the * * * we feel that we might expedite it * * * and saves your bank and Goldman cannot do that himself * * * still, I filed, not he. 1155

"Schulman: Will you call Mr. Goldman?"

That was probably addressed to his secretary.

"Hoffman: I want to get back to the office. Is Kandell going to be here too?

"Schulman: Yes. * * * they will be here any minute * * *."

Mr. Walsh: Just a second. Will you indicate at any point where you are reading, certain words that

156 you couldn't hear—the dots I presume you didn't hear?

The Witness: That is correct.

Mr Walsh: Will you specify that so the jury will follow the continuity of your thought?

The Witness: All right.

A. (Continued) Hoffman started out saying something which wasn't audible—"all the creditors are going to be there, and the result was your three creditors showed up and nobody else, and those three and Kandell became the Creditors' Committee. Isn't it a goddam shame?" —some-
157 thing missed—"why with your help"—something missed—

"Schulman: I didn't know that you were the guy. They tell me that.

"Hoffman: But Levis told me that Goldman and Kandell"—something missed—

"Schulman: If you hadn't come up"—something missed—"you know, this Marty Goldman is smarter than his brother Teddy Goldman.

"(Someone said; Would you mind holding the wire, he's busy on another phone? Who is this, please?)

158 "Hoffman: You know this fellow Teddy Goldman was up to my office twice. This Martin Goldman looks to be a sharp guy.

"Schulman: They see a damn case and they won't let go no matter how the creditors will benefit by it.

Some improper language here.

Mr. Walsh: I think we can skip that, if your Honor please.

The Court: Yes.

Mr. Walsh: I will make objection that that is irrelevant.

A. (Continued) "Hoffman: I first heard before I met him. Now I'm convinced that you yourself feel in your blood that they should get 80 per cent and they wouldn't"—something missed—"don't worry this masterpiece. I had Kolman, who is an attorney, appointed the assignee and so that he could see and watch every goddam thing that was going on, and I was going to be down at the sale and keep my eyes peeled, and if there was anything wrong, I was going to call the sale off. I'm not kidding you." —something missed— "He's not Schulman. Did you ever see the guys the way they shortchange you." 1159

"Schulman: It's the same way this guy this way"— 1160

At this point there was the noise of a fog horn which interrupted the hearing.

Mr. Corbin: Who made the fog horn?

The Witness: No. Apparently this was some outside noise which was picked up.

Mr. Walsh: It sounded like a fog horn to you?

The Witness: Well, I mean Chambers Street, near the river, from the shipping. That is what it was.

A. (Continued) "Hoffman: You know the inspection of these buyers, I told Feldman not to leave more than one or two at a time into the store. 1161

"Schulman: I'm telling you now, would you know how to check whether they got a few?

"Hoffman: I could check and make sure, darn sure, that they wouldn't do any guzzling. How do you fellows know how?

"Schulman: After you know the tricks you know how it works. They can't pull any tricks on me.

"Hoffman: I know better. In this case there was 360 lots and it has to be a bid on each lot, and down

162 at the sale I keep checking all the bids for each lot" —something missed—"suppose they tell you here?

"Schulman: How do you know?

"Hoffman: I'm keeping track of the count.

"(Several additional persons seemed to engage in conversation at this point which could not be distinguished.)

"Hoffman: Who spoiled it?" —he said something which wasn't gotten—"some got time, another got time, so till today, 90 per cent or more prisoners" —something missed.

"Schulman: Even the big guys, even the bigger guys. As I told you before, the Association is a misnomer. They have no responsibility. They can tell you to go to hell. Even so you can take my diploma away. And that Association is a racket for themselves. If you ask me, don't the creditors know this"—something missed— "It looks like with the five hundred they are getting from the city, we are expecting to get from the city, and there were only about $2500 liabilities. How the hell is it close to 80 per cent?

"Hoffman: It might have bought more. That stuff looked good"—something missed—"said that the stuff was real good.

"Schulman: Said that the stuff looked very good to him.

"Hoffman: You mean he doesn't know what the hell it's all about"—

At this point someone apparently was speaking on the phone. Shall I skip that?

Mr. Walsh: That is irrelevant.

Mr Corbin: There is no relevancy there.

The Court: Yes, just eliminate it then.

A. (Continued) The next thing Hoffman said: "He may 1165
have come so late that the other attorney had to default already, so you guys finally got to work.

"Schulman: As I told you before, the only thing I'll tell you. They are making money quicker. Ordinarily, the money he was getting, only ultimately this guy"—something missed—"I'm convinced that the guy honestly means that the brothers were going to get, as he told me last time he had some kind"—something missed—"he told me not to be such a"—something missed—"I told him over here, whether you like the setup or you don't like the setup, he shouldn't 1166
hog the whole picture himself.

"Hoffman: Last week his wife and my wife"—something missed—"that the judge will give me an allowance as the attorney for the assignee six months later or a year later"—something missed—"so that's the situation I'm telling you myself"—something missed—"There's room for others"—something missed—"you got the damn thing so sewed up. I'll tell you I tried everything to dissuade everybody from allowing the petition. I'll tell you something, I'm in this business"—something missed—"will you stop making speeches and get down to business. 1167

"Schulman: Then you should have stopped talking so much. I'm in this business, you think I'm going to write"—something missed—"I'm telling you he's sincere about it.

"(Third party seemed to be speaking, but could not be distinguished.)

"Hoffman: Let's get down to business. He wants to waive, and he wants even including the proceeds"—something missed—"whatever the records indicate. I'll tell you what Goldman, I'll be satisfied if you"—something missed—"called thirty for the assignee,

1168 and in order to show"—something missed— "Well now, listen, Goldman, let's get this straight.

"Goldman:"—something missed—"never made a deal with him in my life and"—something missed.

"(At this point all the parties started arguing and speaking at once.)

"Hoffman: You know goddam well whatever I told the judge was true.

"Goldman: I know damn well it wasn't the truth, otherwise you'd sell that stock and pro-rate the balance for the creditors.

"(Telephone call: Well, I'll tell him later. What's
1169 the number? Tell Sam to call him and find out later on. I can't call him. I'll be back shortly anyway. I can't tell you.)

"Hoffman: You were there. You heard me tell Coxe for 45 minutes"—something missed.

"Goldman: Listen, I don't handle this bankruptcy business. I ain't going to be besmirched by anybody at all.

"Schulman: Wait a second.

"Goldman: You know me for thirteen years. It didn't make any difference to you fellows to come in on a clean assignment and try to dirty the damn
1170 thing. We give creditors a quick sellout. You wanted to give them 40 per cent.

"Hoffman: Yes. I figured to give them 80 per cent. You get enough money and"—something missed—"I offered to Schulman to see that everything was right.

"Schulman: I wouldn't let him act. I wouldn't let anybody act.

"Hoffman: I represent 70 creditors and you know it, and you know that I sent letters out to everybody, every one of the creditors, telling them what the assets were and the liabilities were.

"Goldman: How did you know it was true? 1171

"Hoffman: In the first place, you asked me to come down and speak to you. Now you have brought Mr. Goldman over here, and now he starts something.

"Goldman: You started.

"Hoffman: I didn't start it. You're getting to be as bad as Schulman. I'm going to tell Bob Levis everything that took place up to that point.

"Goldman: But tell him the truth.

"Hoffman: You bet I'll tell him the truth.

"(For some time the conversation went on in very low tones which could not be overheard.)

"Hoffman: I said I'd consider the God damn 1172 thing, and that's the reason I didn't give Kandell the list of creditors"—something missed—"I did not. I said I'd think that over, and I said that you people could send your buyers down there, and then you come back and say I offered a settlement or somebody said that"—something missed.

"Goldman: But the assignment would be put out on commission, and Kandell would get paid and the auctioneer would get paid.

"Schulman: Kandell will get it and Kolman will get it.

"Hoffman: Bristleman would get it and Rebek 1173 and Brandes would get it and Schwartz and Zuckerman would get it, and all the creditors would get it"—something missed—"yes, getting what they are entitled to. What are those three fellows entitled to more for?" —something missed—"wait a second, here's what you said. You told me that you could get a certain amount of money for that particular stock.

"Schulman: I did not.

"Hoffman: You don't know how much you could

1174 get? You told me you could force a settlement of 40 per cent through Kandell's help with the Association, and that that 40 per cent would represent around $1000 because there is about $2500 liabilities, and that the balance would be divided up. Kandell would have to be considered; you'd have to be considered; the auctioneer would have to be considered. The assignee, myself, and some of the other creditors, such as the three creditors. God damn right I was steamed and steamed plenty. Do you consider it fair? Wait a second. I didn't speak to you since the time I left that meeting. Is that
1175 right? I didn't speak to Cohen since I left that meeting until the following Friday when I asked him for an offer.

"Goldman: Offer"—something missed.

"Hoffman: Wait a second. I asked him if he had an offer, and he tells me go for fifteen hundred when I knew damn well that stock was worth close to two thousand dollars. I had advised Niehouse that the second inventory taken by the auctioneer indicated that that stock should bring around $2000 at the sale. What does Cohen do? Cohen begins
1176 to tell everybody that I said it was $15,000. He knows damn well he's lying"—something missed—"wait a second. What does two thousand mean.

"Goldman: You'd get back the other statements to clarify the record. You know I have a pretty good figure.

"Hoffman: Didn't you say you were going to get somebody by the name of Goldmany, Goldman or some auctioneer or buyer?

"Goldman: I said I don't know.

"Hoffman: You said it was a cinch to get it through for 40 per cent.

"Goldman: I didn't guarantee any amount. 1177

"Hoffman: No, but you mentioned 40 per cent was easy.

"Goldman: I said 40 per cent would be a good sum.

"Hoffman: And I asked you.

"Goldman: I said you could get paid and your assignee could get paid and your auctioneer could be paid.

"Hoffman: And you also said you could get paid and Kandell could get paid.

"Goldman: Supposing I said that?

"Hoffman: That in itself isn't the whole thing" 1178
—something missed—"wait a second. I'll tell you what harm you did. When I showed you fellows that I didn't want to have any part of it by refusing to call back Kandell or Cohen and yourself, and instead had the assignee, Kolman, call and arrange for an appointment to have buyers or people or creditors look at that stock, that should have been sufficient indication to you fellows to keep the hell away from me, but instead what did you do?

"Goldman: Your 100 per cent wrong.

"Hoffman: You see?

"Goldman: Because I figured that you were 1179
sincere. Then you're 100 per cent wrong. I'll tell you why. You're doing creditors a favor by allowing me and X and Y and Z to go up and look at the stock on Monday or Thursday and any other day in anticipation of the assignee's sale, showing us" —something missed—"sure, but you fellows Goldman, can go fly a kite. Sammy Kandell can go fly a kite.

"Hoffman: Isn't Sammy Kandell interested in creditors for the association?

"Goldman: Wait a minute; if I was there representing creditors, you would tell me also to glorify myself by flying a kite, and if you want it in plain English, from our point of view"—something missed.

"Hoffman: Wait a second. What can I harm there"—something missed—"all I can be even at this time"—something missed—to satisfy fee for representing the assignee.

"Goldman: Don't the creditors get dividends? Don't they pay a fee for representing them? You're all wrong. You're all bad blood and ill feeling and everything else. Here's the point, Mr. Schulman. I indicated to these fellows that I didn't want to have any part of that.

"Hoffman: Wait a second. I also told them that they were welcome to send down any creditors that they wanted, any buyers that they wanted, even at the time of the sale; to see how that sale was conducted, and the sale was to be properly conducted.

"Goldman: You're doing them no favors.

"Hoffman: Aren't they interested?

"Goldman: No. I'll tell you why. In the first place, one is a real personal reason and one is"—something missed—"I want to at least straighten out the fundamental issue here. In the first place, let us say from a strictly legal basis or strictly business basis, I represent, let us say, forget Goldman is going to take"—something missed—"and I do a substantial part for the creditors. I say to myself, and I say to you very openly, I don't want you, Mr. Hoffman to run my part."

Mr. Corbin: He did not want Hoffman "to run his party"?

The Witness: That's what I have.

Mr. Corbin: Party? 1183

The Witness: No. I have "part." That is what I said.

Mr. Corbin: I thought you said "party."

The Witness: No.

"I say to myself, and I say to you very openly, I don't want you, Mr. Hoffman, to run my part."

A. (Continued) "Hoffman: Right. Let me ask you something to this point. Let's be frank. Who in the hell did he represent in that creditors' bunch? Who did Goldman represent? He tells me he represented Rockefeller. He did like hell. He never authorized Kandell or the Association to be repaid, and Goldman comes in and said he represents Butler Bros. What do you call that? 1184

"Schulman: The hearing was"—something missed—"Goldman didn't represent Butler Bros.

"Hoffman: I found out"—something missed.

"Schulman: Goldman represents other creditors and also could come there at anybody's instigation.

"Hoffman: Wait a minute, Jake. We learn as we grow older"—something missed—"represented by associations that make statements and so on to undermine fellows. Did you represent Butler Bros.? They had the claim of Butler Bros. I'll tell you the reason I called Butler Bros. and I explained it to Cohen. The reason I called Butler Bros. to apologize for the fact that I didn't keep an appointment which I had with him the day that your brother came to my office. Now the reason I didn't go over to see Niehouse, I had an appointment with him that day, and that is the reason I didn't go over to see him because your brother came to the office and when I called him subsequently, I apologized for not keeping the appointment, and explained to him 1185

186 the fact that Mr. Goldman came up to my office and he represented Butler Bros., and under those circumstances, I didn't want to come over to speak to him because it would be sufficient if I spoke to his attorney, and at the same time I told him that the inventory showed an increase of close to $500 in the estimation of an appraiser. I didn't go and call any client and tell them that their attorney's did anything else.

"Goldman: For what purpose"—something missed—"to let you go ahead with the assignment and we were doing a lot of wrong things.

187 "Hoffman: Didn't I send him the letter before I even spoke to you fellows? Didn't I explain in the letter what he expected to get?

"Goldman: Intentionally or otherwise, you should take that opportunity. Let us say somebody"—something missed—"advising somebody else's client"—and the end of that was missed.

"Hoffman: I had an appointment with Niehouse.

"Goldman: Let me tell you something. For instance, I represent the three people or four people, let's say. I don't want X or Y or Z, whoever they may be, and as long as they are designated by

188 letters"—something missed—"to come to the sale. It so happens that you were up today"—something missed—"or even the attorney for the assignee, I'm sure that said to the creditors where the assignee represents loan creditors"—something missed.

"Hoffman: Where the records indicate"—something missed.

"Goldman: I'll tell you why. They are real legitimate first class creditors.

"Hoffman: They got the bank account and withdrew certain money, and on the same date"—the

end of that was missed. Then there was an argument, all of them speaking at one time and there was also some noise in the earphones. 118

(Reading):

"Goldman: If I represent a sufficient number of creditors, let us say"—the end of that was missed. The voices became too low to be heard. Goldman said something,—"dismissed the involuntary petition.

"Hoffman: You also make a motion to dismiss the assignment proceedings. The real method he wanted me to say first, we will sell it wholesale. When I say we, I mean all of us, so you shouldn't say I accuse"—something missed—"and also tell creditors that"—something missed. 119

"(Howling in the earphones.)

"Schulman: I'll say this much. We'll sit down together if we can't work out our own fees, then we'll get the representatives of the creditors, if we can't do that.

"Hoffman: Where does the assignee come in?

"Goldman: The assignee, attorney for the assignee, the auctioneer that he engaged, is entitled to a fee"—something missed—"whether called in the association or whether we called in Goldman. Here is the point. What are you doing here? 119

"Hoffman: If there is going to be any kidding around"—something missed—"whom do you represent there?

"Goldman: I represent more creditors. Assume that I'm wrong, whether he represents a Chinaman or whether he represents six creditors, as far as this is concerned, the association includes, comprises, for purposes of your discussion.

"Hoffman: Oh, don't get so loquacious and get down to business.

192 "Schulman: You did a lot of talking.

"Goldman: I think I'm plain enough.

"Hoffman: You mean the association gets"— something missed.

"Goldman: Oh, no. The Creditors' Committee.

"Hoffman: The full amount of the purchase goes to the Creditors' Committee, is that right, together with the proceeds from the city?"—something missed —"do you want to have me change that a little bit? I want to be impartial. Mr. Goldman after all does have some little experience in this line, and as I think I indicated before, I even came here, as for
193 the real mechanics of this thing, of the workings of it, I think we all agree, that is, in writing the letters we all left to him for this particular reason. He is in a better position than you or I because I'm supposed to be the"—something missed—"You're supposed to be the attorney for the assignee. Now we are proposing a method of distribution to creditors which will take a form other than the assignment proceeding or the bankruptcy proceeding. So I think this method of procedure should be so as we in our representative position, that in view of the
194 bankruptcy proceedings which may entail additional expense. We will tell the creditors that.

"Goldman: You mean we'll get the creditors' consent?

"Hoffman: Yes.

"Goldman: Outside of relatives, let him get the consents.

"Schulman: How was this going to be sold?

"Hoffman: By your man signing a bill of sale to X. For what price.

"Goldman: For the highest price that we get.

"Hoffman: What is the highest price?

"Schulman: Leave it open. 1195

"Goldman: The Creditors' Committee including yourself can come here.

"Hoffman: Let's not kid ourselves. Wait a second. Let's not kid ourselves. Let's not give it a price close to $2,000. It should bring around that amount.

"Goldman: You're crazy. You mean an auction sale?

"Hoffman: You have got about close $100 for expenses already"—something missed—"and taking inventory and advertising. Wait a second, you got close to $100 expenses that you know you got to pay anyway. Isn't that right? 1196

"Schulman: Who has got the expenses?

"Hoffman: Yes, that's right, but say, assume for the moment that it's $100, maybe more or less.

"Goldman: Well, supposing it was two thousand.

"Hoffman: The auctioneer gets five percent.

"Schulman: Ten percent.

"Hoffman: He's going to get five percent, not ten percent. That's all you're going to get, that is, about $100 from $2,000. That means there's $1,800.

"Schulman: You got advertising.

"Hoffman: That's already with the catalog and everything he has. That's what I'm talking about. 1197
That includes the cataloging, advertising. Wait a minute, there is four men at least.

"Schulman: There is two men.

"Hoffman: At the sale.

"Goldman: All right. You think it will bring two thousand. The most you'd get would be seventeen hundred or eighteen hundred. That's assuming it brings two. But supposing they fool you and it only brings fifteen hundred.

"Hoffman: Who appraised it?

198 "Schulman: We can't control the sale.

"Hoffman: Neither can you.

"Schulman: Can't control it either. Well, how do you control it when you have bidders from the outside? By the bidding on the"—something missed.

"Goldman: Oh well"—something missed.

"Schulman: Who is going to be the one to appraise the merchandise.

"Goldman: We have private stock bidding against each other, and it isn't a private auction sale for the reason a man may take that and buy it privately. Once a sale has taken place there. Well, a sale will
199 bring, for example, you believe, $2,000, and it should bring privately more. And yet I asked Cohen and he says twelve to fifteen hundred.

"Hoffman: Twelve to sixteen hundred dollars.

"Goldman: You get as low as twelve hundred or as high as sixteen hundred. That meant to say he got a group of people in"—something missed.

"Hoffman: Supposing you get eighteen hundred. You at least know that when we get sixteen hundred you can't get any less. We got the sixteen hundred tied up.

200 "Goldman: At a public auction sale he can't tell.

"Hoffman: How many auction sales did you conduct? Didn't you conduct plenty of auction sales? For the assignee or trustee or for the receiver? How many auction sales did you conduct?

"Goldman: Plenty of them.

"Hoffman: Well, why weren't those conducted by private sales?

"Goldman: I'll tell you why. Very good answer. A very good question and deserves an answer. Ordinarily I disapprove of assignment. Sometimes" something missed—"the only way you could prevent

him from going"—something missed—"is to have an assignment. Other times you have a wide disparity between assets"—something missed—"a two thousand dollar stock when they owe ten thousand dollars. It don't bring a God damn thing. 1201

"Schulman: Personally, we don't care about the stock.

"Hoffman: Let me ask you something here. You have got a situation where you got about twenty-five hundred in liabilities and approximately twenty-five hundred in assets.

"Schulman: You were designated as the boss and we want to be the boss. 1202

"Goldman: I wouldn't say"—something missed.

"Schulman: I wouldn't say we want to be the boss.

"Goldman: I'd say that just because the liabilities and the assets are such that the creditors can really do something"—something missed.

"Hoffman: I'd say this: that if creditors even got 60 percent, if creditors got 60 percent, the reputable creditors wouldn't ask for any difference or balance.

"Schulman: Who is reputable ones? 1203

"Hoffman: They I think are in the minority and have small claims.

"Goldman: The fact you call a creditor reputable" something missed—"doesn't go after his balance.

"Hoffman: Not to that extent where they see that a man has made an effort. Where they see that a gentleman has made an effort.

"Schulman: I gave you a plan where your man specifically got the release. You talked about.

"Hoffman: You get"—something missed.

"Goldman: You get the releases from all these

1204 unknown creditors. Yet give the proposition for all creditors to sign a release, and you run out.

"Schulman: The mere fact"—something missed.

"Goldman: When creditors are told that they get close to one hundred cents on the dollar by letters and they get a full lengthy letter explaining the condition of the estate, and then subsequently somebody makes a proposition of forty cents on the dollar"—something missed—the proving is going to be"—and the end of that was missed.

"Hoffman: That the letter was a little bit dishonest.

1205 "Goldman: They'll depend on it"—something missed—"are you afraid that there was going to be a reflection against you? All you have to do is to call in the creditors you are concerned about and let them"—something missed—"upon the situation"—something missed—"we all told you that when the thing wouldn't be settled by creditors, we felt confident that every creditor would consent because we felt it would be done in such a way that we'd satisfy the creditors"—something missed—"or on the day of that sale there are two or three other sales of items in the same line."

1206 At this point someone seemed to be making a phone call, and Goldman said:

"In this particular case there are buyers for ten thousand and five."

Mr. Corbin: It is obvious that he was talking about some other case there.

Mr. Walsh: I would assume so.

Mr. Schachner: You suggested that we do not read it.

Mr. Corbin: No, it is all right.

The Court: You can eliminate that if you wish.

gentlemen, that part of it. If not, let it be read. 1207

Mr. Corbin: I wouldn't eliminate it. I just made that observation because I do not want anybody to think that those figures applied to this case.

The Court: Well, I think your observation is correct.

Mr. Corbin: Yes.

The Court: You go on and read it, then.

A. (continuing) "Hoffman: You have got something that's worth twenty thousand dollars. Is there any sense in getting a ten thousand minimum bid? 1208

"Goldman: In this particular case in which we got ten thousand, the most we could have gotten for the stock was ten thousand.

"Hoffman: Why was it appraised then?

"Goldman: It showed that it could bring anywheres from twelve to fifteen thousand, and we said we could never rely upon an auction sale, so we don't want to take the twelve or thirteen thousand" —something missed—"is the fellow that made your appraisal"—something missed.

"Hoffman: Holding the sale down to ten five or they are making two or three thousand dollars 1209 on it.

"Goldman: I'll see the rest of the buyers.

"Hoffman: Again it comes down to the question of others watching. That's what I said. To have the creditors down or have the representatives down at the sale to see the sale.

"Goldman: If you're going to have an appraisal by Reach Bros. that's one thing. If you're going to have an appraisal by the association that's another thing"—something missed—"send the Underwriter's Salvage over there and find out what it's worth."

210 Telephone call here which does not obtain to the—

Mr. Corbin: May we agree that in that connection that where Mr. Goldman suggested sending the Underwriter's Salvage over there to find out what it was worth, that that Underwriter's Salvage is the official designee of the Federal courts and has been since 1927.

Mr. Walsh: If Mr. Corbin says that is the fact, that is the fact.

Mr. Corbin: That is what I understand. I mean the Federal courts in this district.

The Court: Very well. Is that stipulated?

211 Mr. Walsh: If Mr. Corbin says that is the fact, that we had agreed that this whole page was irrelevant so it doesn't make any difference anyway. It would appear that they are talking about something else.

Mr. Corbin: I did not say that wasn't relevant. Where my client made that suggestion, I think it is quite relevant.

The Court: Very well. Let it all go in.

Mr. Corbin: I just wanted to identify the name, who they were.

212 A. (continuing) "(The parties apparently then left the room, and returned a short time later.)

"Schulman: Are you satisfied? Then why do you hesitate?

"Hoffman: I don't know who is to be in charge.

"Schulman: Niehouse, Donaldson, anybody else you want. Here you are, put the names down of all the creditors and you can have your choice.

"Goldman: I say"—something missed.

"Hoffman: We three are going to agree. Who the hell is Niehouse? I went over to Jersey City to

talk to him, and one of my clients called him up and 1213
my client called him up while I was over to Jersey City."

Mr. Walsh: I think "an individual" should be inserted here.

Mr. Corbin: A what?

Mr. Walsh: Just say "an individual" should be inserted here instead of the language in it.

Mr. Corbin: Oh, I see.

The Witness: There is some improper language which can be skipped.

Mr. Fielding: "The individual."

1214

A. (Continuing) "The individual sits there on a little elevated station, a goy, and I asked Armstrong or whoever it was, I want to talk to Niehouse. Niehouse will keep his eyes open and won't even give me a tumble. Niehouse give a good"—something missed—"about you. Because your name is Goldman, and he cares for the man in the moon. I say we three"—something missed—"go home. I will straighten it out with him. All right. Say Goldman, there are also three hundred dollars loan creditors exclusive of the relatives.

"Goldman: You want to include them? 1215

"Hoffman: Why, aren't they creditors the same as anybody else?

"Goldman: Who are they?

"Hoffman: One is connected with some synagogue. Three hundred dollars of loan creditors. Sure, I wanted to know who the hell he represents. Who was he talking for, Kandell? Who the hell does he want on the Creditors Committee? What is he going to get some phoney on the Creditors' Committee and take phoney bids and make their split on the difference between what this phoney buyer is going

1216 to offer them and what the stuff is really worth? Thats why I was holding him close to the $2,000 figure. He's not kidding me"—something missed—"Dunn and another man made an appraisal there of approximately two thousand. It ran between nineteen and twenty-one, and the figure of two thousand was struck as an average."

At this point the conversation became very low and some of it was missed.

"Schulman: Westbaum hasn't had a dry goods sales in the last three years.

"Hoffman: Let me tell you something, when the
1217 assignee was down there, he reported that one of the buyers that came down there said that the stock was worth close to eighteen to nineteen hundred dollars, and was willing to pay fifteen hundred, and kick back three or four hundred, so we can get an idea of what the stock is worth, so what's he trying to do, kid me? Whats ten thousand dollars minimum offer? What's he giving me a buggy ride?

"Schulman: They run into big cases. I told him, this is a small case, but it's a good case.

"Hoffman: You know what I'd do, my friend?

1218 "Schulman: This is a good case where the creditors would legally get their money without any trouble or waiting or bother, and this monk had to stick his face into it causing every trouble or anything. Hungry, I'm not hungry. The hell with that goddam thing. You see how many assignments I handle?"

The voices became too low again to be heard, but Schulman said something and then continued: "with all the big cases and everything else, they're working exactly for glory. If they do grab themselves five hundred or seven hundred or we grab ourselves one hundred fifty, and they wind up with all

their forty or fifty or sixty creditors in the office and 1219
a couple of stinking lawyers and everything else, they wind up less net than you and I. You understand, that's what I told this fellow, and the proof is not only that they run after those fifteen hundred dollar bills and all that, but they have time to do it.

"Schulman answered the telephone: Hello, yes, sure. Look, I'm going to call you back in five minutes. O. K.

"Hoffman: That's all it is, petty larceny business.

"The parties continued to speak in very low tones.

"Hoffman: He said what? What about the 1220
assignee?"—something missed—"said that was all right? What, $1,400?

"Schulman: Yes.

"Hoffman: Fourteen hundred dollars would be close to, I should judge, close to 60 percent"—something missed.

"deduct the auctioneer's fees and the fees remaining from the 60 percent, and the amount realized on the sale of the assets and then the balance is divided three ways.

"(It was impossible to overhear Schulman's remarks for some time at this point.)

"Hoffman: The auctioneer's expenses, I'm talking 1221
to you in round figures, whether it's 150 or 200. I'm not going to scrap with you people when there's enough to go around. I'm not interested.

"Schulman:" —something missed.

"Hoffman: So we got $600"—something missed—"sure, you're deducting as much as $200 from the assignment.

"Schulman: You got $400 in that other case that you did ten times as much work.

"Hoffman: The work didn't make any difference"

1222 —something missed—"would have gotten $500"—something missed—"I want to tell you something. Here is an open secret. I don't owe any allegiance or confidence"—something missed—"somebody and one of the sweetest, but not one of the most honorable"—something missed—"pays in bonuses alone during the year three thousand dollars because for instance, he is entitled to a $10,000 fee or $20,000 fee and everything else, and got a wife that can spend more money than he ever earns, pays to a guy I know $3,000 in bonuses in order to get money in"
—something missed—"in other words, loans it during
1223 the disallowances come in. Three thousand dollars a year at least in bonuses for lending money, for borrowing money.

"Hoffman: I don't know what your financial background is or isn't, but I say two hundred today in your pocket is worth three hundred next year—possibly three hundred next year.

"Schulman: We'll dismiss the petition. I'm going to send over a man in the morning and that man will"
—at this point the voices died down again.

"Hoffman: How about having control of the
1224 money?" Something missed. "consenting to the dismissal of the assignment and have a paper signed that his fees and expenses"—something missed—"now when do you want me at the store, nine o'clock tomorrow?

"Schulman: Tentatively now, and then if its wrong"—something missed.

"Hoffman: About 10:30 tomorrow morning.

"Schulman: And if there's anything wrong, I'll be there because the what did you call it, the jurisdiction of the bankruptcy court and all that.

"Hoffman: I don't know whether the petition in

bankruptcy, where the assignee even has a right to go near the assets. 1225

"(Someone made a telephone call: Hello, Mr. A., look, the man with the key is not available now, but tentatively we made an appointment. If I don't call you by ten o'clock tomorrow, then the appointment stands for ten o'clock at 36 the Bowery. Just the judge, I and Avery and all that stuff. Where? Who sent you? Oh yes.)"

Mr. Walsh: Whose voice is that, that telephone call that you heard, Mr. Schulman's?

Mr. Mintzer: It doesn't say.

The Witness: I haven't got it indicated here. 1226

A. (continuing) "Hoffman: Mr. Schulman, I'm going back to my office. Tentatively for 10:30 tomorrow morning.

"Schulman: O. K., yes.

"Hoffman: Good night.

"(Hoffman apparently left, and Schulman apparently continued with the phone call.)

"I'm in a position now, I control—what was the figure that you had the appraisal? He wanted to give the creditors 80 cents on the dollar—fighting to give it to them. No fooling. We had to throw it 1227
into bankruptcy and steps and so, in order that he should make a dollar? So here's what he did. Between you and me he wanted to give creditors 80 cents on the dollar, so there was no room for the boys. So we dumped it on it. Do you understand? The reason I tell you is this. He had two or three men of his own, his auctioneer, that wanted to give him eighteen hundred to two thousand, you understand? Now Goldy even said that it would bring sixteen hundred. Goldman is smart. He says he'd bring twelve hundred and sixteen hundred, under-

1228 stand? So figuring when he told me that somebody had raised it to two thousand and wanted to give it to him at the figure, I figured Goldman would get thirty-three hundred for it, but as it is now take another look and tell me. You don't have to. If we can get a few dollars for ourselves—the result is three. I'll meet you there tomorrow at 10:30, or else if you like, you can come here around ten and I'll go with you. Why, where is it near? I'll have my car here anyhow. The other deal I'll know tomorrow as I told you yesterday also. I'm in control. Yes. Did you see him there? That's why it's in
1229 bankruptcy. I know he will. Yes, yes. All right. Look, I'll tell you this much. In just about a day or so apart. I beg your pardon. I didn't ask that. No. No. I didn't ask that. O. K. big boy, I'll meet you there at 346 tomorrow unless I call you up to the contrary about 10 o'clock."

That is the end of it.

The Court: Is that all of that?

The Witness: That is all.

The Court: Gentlemen, I have made some appointments which require my leaving here Thursday morning. I am just wondering if it would inconvenience
1230 you to hold a session tomorrow morning from about ten to twelve-fifteen.

Mr. Walsh: It is all right with us.

The Court: I do not want to inconvenience you gentlemen. It looks like now that this case is going to go on for several days next week, and I would like to get at it so that I can finish it Monday, Tuesday and Wednesday, if that is at all possible.

Mr. Mintzer: Judge, I have an arrangement to deliver a talk tomorrow morning. I can cancel it, of course, but I would not like to do it.

(Discussion off the record re adjournment.) 1231

The Court: Very well. We will convene Monday morning at ten o'clock. I will see Mr. Ickes and see about cutting the morning calendar very short. We will get furt[illegible] along into this case.

Very well. Recess until ten o'clock.

(Adjourned to Monday, July 22, 1940, at 10:00 a. m.)

UNITED STATES OF AMERICA

—against—

MORTON GOLDMAN, et al. 1232

New York, July 22, 1940,
10:00 A. M.

TRIAL RESUMED.

NATHANIEL BODINGER, resumed the stand.

Direct examination continued by Mr. Schachner:

Q. Mr. Bodinger, will you please continue reading from where you stopped at the last session.

Mr. Walsh: He finished. 1233

Mr. Fielding: My recollection is that he finished the testimony of the first time that he took those notes.

The Witness: Yes, that is correct.

Mr. Fielding: If that is so I, at this time, on behalf of the defendant Schulman ask that the entire testimony be stricken out on the ground that the stenographer himself admits that he did not get the complete conversation of all parties who were at this meeting. Now it is manifestly unfair, in my opinion, to take part of a conversation which will naturally

1234 result in nothing but a meaningless garble and then as to another transcribed conversation, take down practically all of it.

The Court: I will overrule the motion. I think that goes to the weight of the testimony rather than to its competency.

Mr. Fielding: Exception.

Q. Will you start reading then the meeting of April the 14th?

Mr. Walsh: That is Government's Exhibit 20-A.

Mr. Schachner: Let the record show that the wit-
1235 ness is now reading from Government's Exhibit 20-A.

A. This is a conversation on April 14, 1937, in Schulman's office at 12:10 P. M.

"Schulman: Listen, big boy"—

Mr. Corbin: Just a moment. Is there any claim made by the Government that Mr. Goldman was present at all or any part of that conversation?

Mr. Schachner: No claim.

Mr. Walsh: And it won't appear in the record either.

1236 The Court: Very well. Let the record show that.

A. (Continued) And the end of that was missed.

"Hoffman: The upshot is the stock is not work two hundred"—something missed—

"Schulman:" —something missed—"said"—something missed—"and the man said to put it in at fifteen hundred dollars in order to put the wriggle in through Fishbaum. We can't afford less than that, so the consequence is"—something missed.

"Hoffman: I want at as far as you or I are

concerned"—something missed—"we can have this first woman that you had down here, Abramson, and he gives it fifteen"—something missed. 1237

"Schulman: No, I'll tell you what I'll do. Cohen said"—something missed.

"Hoffman: Isn't Abramson the fellow that Cohen had down there at first?

"Schulman: I think so because he told me. I'm going to call up Cohen right now and ask him whether he can get any more money.

"Hoffman:" —something missed—"seventy dollars a month since the assignment was filed. It's almost three weeks. 1238

"Schulman: Technically the sale won't go through.

"Hoffman: Another week's rent, about fifteen or twenty dollars for expenses"—the end of it was missed.

Schulman at this point made a telephone call.

"Hello, who is this, Phil Cohen? Say Phil, on that Bowery stuff, what is the top that you could get? Yes. No, no. Wait a minute. It so happens that you sent over Abramson without my knowing it. At that time I also called in Abramson and Abramson told me fifteen hundred dollars. Right. Now can I let it go to Abramson for fifteen? Yes. No. O. K. Yes. You think it's definite on fifteen? O. K. No, I'll talk to him. Might squeeze him over if I can. If I can't—— You understand what I mean? Because I have a conference with another lawyer here, Mr. Hoffman, and I want to know definitely where he stands and where you and I stand, you know what I mean, as far as value of the stuff. If he can get 17, 18, 19—— Right. O. K."—that is the end. 1239

Then Schulman answered in a telephone call. "Yes. Oh, that uptown stock we have a meeting

1240 before the Judge at 4 o'clock. There is somebody, Eckstein, is trying to put a wrinkle into it. Wolan, he is bothering us. Now if you want to give him a $25 bill and promise him something— I promised him nothing. The hell with him. He's so goddam stupid that I don't want to talk to him"—something missed—"what did she do, have an argument with him there?"

Mr. Walsh: I think this is irrelevant.

Mr. Fielding: I do not think this refers to the subject matter at all.

Mr. Walsh: I will move to strike it out.

1241 The Court: Very well. Let it be stricken out.

Mr. Walsh: Start with Hoffman again.

A. (Continued) "Hoffman: How will that shape up"—something missed—"well, first let's"—something missed—"how much"—something missed—"merchandise we have to consider first of all that forty-five and some odd hundred dollars.

"Schulman: Twenty-five hundred"—something missed.

"Hoffman: Twenty-two something plus three something"—something missed—"expenses are around

1242 $87.00 already"—something missed.

"Schulman: Listen, ninety dollars"—something missed.

"Hoffman: The assignee knows that these men were working on it and put in certain time."

Schulman's reply was missed.

"Hoffman: Wages I can't check, but the wages they charge are equal. Either five or six dollars a day.

"Schulman: All right, ninety dollars.

"Hoffman: Those are the expenses.

"Schulman:" —something missed—"have to make 1243
an application before the referee.

"Hoffman: Ought to amount to at least $100.

"Schulman:" —reply was missed.

"Hoffman: You get $135 for your disbursements, and then you want $125. How much is Goldman"—something missed.

"Schulman:" —something missed—"that's why I say.

"Hoffman: He'd be entitled to reasonable fees for conserving the assets of the estate.

"Schulman: That I know.

"Hoffman: He'd be entitled to some fee by the 1244
court for conceiving the assets of the estate and straightening matters out and holding everything in order. Under the circumstances he put in a lot of time there"—something missed—"he also filed claims for the city to pay over certain monies.

"Schulman:" —something missed—"so he got that much money in his estate you could get.

"Hoffman:" —something missed.

"Schulman: But he didn't get it, therefore"—something missed—"I figured tentatively"—something missed—"I figured tentatively also"—something 1245
missed.

"Hoffman:" —something missed—"insurance there.

"Schulman: Re-insurance.

"Hoffman: Certainly, re-insurance to cover the stock"—something missed.

"Schulman: Look here"—something missed.

"Hoffman: —something missed—"some money all right. Didn't you say he'd give the petition.

"Schulman: I'll tell you what. Let's for the time being make a reserve of $65"—something missed.

246 "Hoffman: Six hundred dollars expense we'll figure includes Goldman for $125. He takes care of Kandell and Cohen. One hundred twenty-five for you to take care of your petitioning creditors. Me, one hundred twenty-five for the attorney for the assignee. The assignee gets twenty-five. That means four hundred fifty. Then there is $35 for your expenses for the petitioning creditors, that's $485. Then in addition to that there are miscellaneous expenses that the assignee has for the insurance premiums and the filing of the assignment, and the certified copies, whatever the case
247 may be; and whatever it may be, about fifteen dollars all around including the premium on the insurance policy. That would be—wait a second, we'll come to that. Let's see, that's three seventy-five, and Goldman for one hundred and twenty-five and yourself. That's three hundred seventy-five and twenty-five for the assignee is five hundred. Then comes your disbursements of thirty-five, that's five hundred thirty-five, fifteen dollars disbursements, that's expenses 550. That leaves $50 over for the other incidental expenses. That brings it up to six hundred. That means there is $500 left for creditors
248 so far as the sale is concerned.

"Schulman: Wait a minute. Nine and three is"—something missed.

"Hoffman: Well, the question is what will the creditors get from the city?

"Schulman: Nine hundred into—

"Hoffman: Into what?

"Schulman: Twenty-five hundred is—

"Hoffman: About twenty-five per cent. Before you're going to figure that, don't forget the landlord doesn't come in from this point on as a general

creditor. He is a preferred creditor during the 1249
time the assignment was in effect.

"Schulman: He has a right to a check.

"Hoffman: He should be paid in full during the time the assignee was in possession.

"Schulman: Thirty-six per cent of twenty-five hundred is"—something missed.

"Hoffman: Thirty-six per cent?

"Schulman: Thirty-three and a third per cent"—something missed—"we'll give them thirty-six plus three hundred, plus the what do you call it, plus the City Sales Tax"—something missed—"get a further distribution"—something missed—"another ten 1250
per cent or twenty-five per cent or forty per cent. When Goldman had that figure"—something missed—"here is 36%. Another 10% of 2500 is $250. So it's 36 and 10 is 46. So shove them through a 40 or 45% and we keep the balance.

"Hoffman: What is the first thing to do?

"Schulman: Now I'll tell you.

"Hoffman: Supposing you get a sixteen hundred buyer"—something missed—"then it will be split three ways?

"Schulman: Naturally.

"Hoffman: And then what do you have to do? 1251
You have to dismiss the petition first?

"Schulman: That's right. The first thing for you to do is get a bill of sale from your man with an affidavit.

"Hoffman: Well then, I'll tell you what you do. You prepare the necessary papers as long as you said you'd do the papers, whatever is necessary to go through with this.

"Schulman: Yes. The only thing is, first get a bill of sale signed by your party.

1252 "Hoffman: I'll have to go up to"—something missed.

"Schulman: Now get from him a bill of sale with an affidavit as to"—something missed.

"Hoffman: Well, it's already catalogued.

"Schulman: Number 2. Get a waiver of all these personal little things.

"Hoffman: Well, I have two affidavits in respect to [redacted] money"—something missed.

"Schulman: Except for this $300, get waivers from the rest.

"Hoffman: Get waivers from the two"—something
1253 missed.

"Schulman: In other words, I want to be left clear. Or give me an affidavit of creditors totalling $2500.

"Hoffman: All right.

"Schulman: When you have that, I'll commence doing my work at once.

"Hoffman: Who is going to hold—

"Schulman: You can hold it.

"Hoffman: When will this client pay over the"—something missed.

1254 "Schulman: As soon as I give him the bill of sale, or as soon as I ask him. Even now, if he asks me to hold the $1500"—something missed—"if you want a receipt I have it."

Hoffman's reply was missed.

"Schulman: Really on the level? Want me to go to your client?

"Hoffman: I mean is there any special form of bill of sale?

"Schulman: No"—something missed.

"Hoffman: When will you let me know whether it's fifteen or sixteen?

"Schulman: Make it $1.00 and other valuable consideration"—something missed. 1255

"Hoffman: He is he going to show if he pays by check, if the client is going to pay by check"—something missed.

"Schulman: He can pay any way I tell him. In other words, the difference between"—something missed—if I were you, I'd put out that bill of sale for, say, $1300,, say twenty fifty is the balance.

"Hoffman: In other words, you want the contract for the bill of sale"—something missed.

"Schulman: Right.

"Hoffman: When you get that affidavit"—something missed—as to a list of creditors"—something missed. 1256

"Schulman: Then when you have that, I'll get started right away with dismissing the assignments.

"Hoffman: Now the next thing is this. If the contract for the bill of sale is $1250, you will get the difference of 250 or 350 as the case may be. How are you going to set certain fees and expenses against that $1250?

"Schulman: Exactly. We can say that we are satisfied ourselves with a fifty or seventy-five dollar bill, you understand? In other words, we can divide so much officially and so much unofficially. 1257

"Hoffman: Then what I have to do—

"Schulman: Get the bill of sale, and let me know whether you got the extra hundred.

"Hoffman: All right. I'm going to hop along.

"Schulman: I can't make it tonight.

"Hoffman: —beginning was missed—"Friday.

"Schulman: Oh, my goodness.

"Hoffman: I got to go over to Brooklyn to morrow night on some case.

1258 "Schulman: Well, then I'll send Cohen unless Hymowitz says no"—something missed—"doesn't know Cohen to any great extent. I'll tell you what, can you telephone?

"Hoffman: I can write him a letter. Then I got to go and get a pass.

"Schulman: Don't forget there are only special visiting hours. On Monday at 11 o'clock.

"Hoffman: Then I'll have to go over to the Department of Correction and get a special"—something missed.

"Schulman: I know Mr."—something missed—

1259 "but since"—something missed—"he may ask me who"—something missed—"it would be better for all.

"Hoffman: It would be all right, but I wanted to see for the money.

"Schulman: Right.

"Hoffman:" —beginning was missed—"about that bill of sale, won't be turned over until you have a certain amount of money in your possession. If he's worried about that"—something missed.

"Schulman: O. K. Let me ask you this. You haven't got the keys now?

1260 "Hoffman: I have got the keys with me, but I hate to let them out of my possession, and I won't.

"Schulman: But I can go over with this man" —something missed.

The words "for less"—the only part of his reply.

"Schulman: It's all yours."

Hoffman then left at 12:45 P. M. At 1:20 P. M. Schulman received a telephone call from someone and stated:

"He's going to get me a bill of sale and Phil Cohen told me that you offered some one four.

Well, listen, you'll have to make the assignment with Phil because Phil don't mean to"—something missed—"you, and in this case he and are one." —something missed—"well, however, as soon as I get the bill of sale I'll let you know. Yes. O. K." 1261

That is the end of that conversation.

Mr. Fielding: Let the record show that I make the same objection to this testimony.

The Court: Yes, and I will overrule that objection and allow you an exception.

Q. Mr. Bodinger, will you now read from the transcript of the conversation on April 21, 1937, which is Government's Exhibit 19-A. A. The conversation began at 5:20 P. M.: 1262

"Schulman: Fishbaum don't have to be straightened out by me or anybody else.

"Hoffman: He said he's going to raise hell if he doesn't get paid for his time at least"—something missed—"he says around eighty-five or ninety dollars, and he wants some money. I told him, as far as I'm concerned, I'll concede the $25 as satisfactory" —something missed.

Schulman's reply was missed. 1263

"Hoffman: No, I'll contribute $25"—something missed.

Schulman's reply was missed.

"Hoffman: No.

"Schulman: You're not married? Well, whoever you support—

"Hoffman: I've got parents, yes.

"Schulman: You support your parents"—something missed—"that $25"—something missed.

"Hoffman:"—beginning was missed—"worked for several days.

64 "Schulman: Well, suppose he went into bankruptcy and didn't get anything.

"Hoffman: If you make a motion to dismiss the petition or withdraw the petition"—something missed.

"Schulman: He made a check.

"Hoffman: Who is 'he'?

"Schulman: He has a claim. He has some claim against the estate for work that he already did"—something missed.

"Hoffman: You think you're satisfied here?

65 "Schulman: Yes." —something missed—"He told me over the phone, he wants $100 outside of his disbursements, and when you and I aren't making anywhere just about the same amount, so what's the auctioneer partners with the lawyer already?

"Hoffman: So what do you want to do?

"Schulman: No, we'll sit down and straighten it out. The question of $25 I wouldn't fight with him, but when he asks $100—

"Hoffman: He's a nice fellow.

"Schulman: He stinks. I'll tell you something. When he was with Harry Rothenberg he was the president of the auctioneers. Treated lawyers nicely, never cheated them"—something missed—"and he
66 was a nice, lovable fellow. Because this kid was a nephew and didn't have anything to do, I suppose he took him into the office. As a matter of fact, he didn't even reach first base as an assistant in the office for that matter, because there were other boys, assistants, who knew the office. He was just a nephew. I'll give you this. For instance, you go to the foreclosure; the chattel mortgage. Actually, you don't have to notify anybody. The chattel mortgage itself gives you a right to peacefully grab, take possession of the chattel which you seek to foreclose.

"Hoffman: No notice is required other than— 1267

"Schulman: What?

"Hoffman: An advertisement to the effect that you will foreclose.

"Schulman: No.

"Hoffman: Yes.

"Schulman: For that matter, you don't even need an advertisement.

"Hoffman: All right.

"Schulman: It's only to play safe that you put in an advertisement and grab it—sell it.

"Hoffman: What do you mean 'play safe'?

"Schulman: That's what the law requires. You, 1268
I tell it to. There is a wrinkle in the law, you can take peaceful possession of a property, with or without notice, and you are through.

"Hoffman: The agreement so provides.

"Schulman: Exactly. But in order to play safe, it's done the way you just said. Why? Because if I sell"—something missed—"an article for $100, then it's at least some fair evidence that it was sold at public auction by an auctioneer, and later I'm more or less protecting myself, largely from any possible claim of a mortgagor or other creditors that it was worth a thousand dollars or five thousand 1269
dollars. I conducted a public sale by an authorized, licensed auctioneer."

Mr. Fielding: Pardon me. I do not think that this is in reference to the matters in hand.

Mr. Walsh: If your Honor please, he should be permitted, I think, to read that. It shows as an indication and characterizes Mr. Schulman for what he is, from this conversation, and I would offer this in as evidence to show a similar incident and the motive and intent and modus operandi of taking

1270 money from the creditors. This is introduced as a similar incident, to show the motive of Mr. Schulman and the others to get as much money as they could in the way as described by this.

The Court: Very well. I will sustain the motion to exclude that part of it. Of course, the other incidents are admissible, but I think the evidence is rather remotely connected and I will sustain the objection and exclude that part of it.

Mr. Walsh: Perhaps if we will read it silently we will find out what is relevant.

The Court: Yes.

1271 Mr. Fielding: The whole page.

The Court: Do you have a copy of it there that I can look at?

(Copy of transcript handed to the Court by Mr. Fielding.)

The Court: (After reading) That is page 3 of this. I will sustain the motion.

Mr. Walsh: It appears that it should go over to page 4, and we will agree that it should start with "Mr. Hoffman," Mr. Fielding?

Mr. Fielding: Right.

1272 A. (Continued) "Hoffman: You mean you represent more dry goods people than Goldman, Malter & Goldman?

"Schulman: Yes. As a matter of fact, for your information, Goldman, Malter & Goldman do not represent any dry goods people.

"Hoffman: Who do they represent?

"Schulman: Kandell. He used to represent"—something missed—"regularly when the collection agents were Endicott-Johnson had a claim in New York and had to go through the collection agent in New York"—something missed—"and you was look-

ing at him you'd think he was an angel"—something 1273
missed—"if Scott were present at the meeting"—something missed—"you understand who is in this particular line also, even far more than if I was present"—something missed.

"Hoffman:" —beginning was missed—"come up to my office and says he represents Hoffman Bros.

"Schulman: He did"—something missed.

"Hoffman: Butler Bros. I know what he said about the association, or in other words, that eventually he would represent Butler Bros and Kandell would get Butler Bros. claim. Is that correct?

"Schulman:" —beginning was missed—"for in- 1274
stance, Kandell is in the same position. Am I right?

"Hoffman: Kandell is no lawyer.

"Schulman: Is Cohen a lawyer?

"Hoffman: No, I heard that he was a lawyer.

"Schulman: No, he never was. Now Kandell, let us say, or Scott get claims from X, Y, and Z. Kandell did have the claim, so their collection man in Buffalo"—something missed—"now to work in Kandell for a fee, Kandell"—something missed—"not being satisfied with that alone, taking care of Sammy Kandell"—something missed—"he called up Jake or somebody else"—something missed. 1275

Hoffman's reply was missed.

"Schulman: Martin come up here"—something missed—"he says you represent Butler, I represent the dry goods association. You as an attorney"—something missed—"ninety-nine out of a hundred know what is going on.

"Hoffman: I don't know yet"—something missed.

"Schulman: Let me finish my story. So I get a hold of a guy like"—something missed—"and things of that kind, you understand what I mean.

1276 and at the same time even if you know or you don't know. Therefore Martin does the work of adjusting the creditors."

Mr. Schachner: Your Honor, at this point I would like to call the attention of the jury to the fact that the first name of one of the defendants is "Martin M. Goldman."

A. (Continued) "He represents Butler Bros."

Hoffman's reply was missed.

"Schulman: He gets, let us say, a hundred dollars. Kandell says therefore fifty, seventy-five, twenty-
1277 five, whatever it is. Actually, Kandell makes more money on a thing like this than anybody else. But what does Martin do? He goes up"—something missed—"and he grabs himself a fifty. That is every day in the weeks. It's five times fifty. Next l"—something missed.

"Hoffman: Yes, I suppose they get"—something missed—"boy, what a racket this is. What are we going to do.

"Schulman: Who is going to see"—something missed—"the bill of sale. I shouldn't teach you this
1278 business. I know if I tell you these things, it stays with you.'

"Hoffman: Those things you pick up sooner or later.

"Schulman: It took me five years, young man.

"Hoffman: With my eyes blind and shut"—something missed.

"Schulman: A few years ago there used to be"—something missed—"they are authorizing—instead of authorizing me to sell the stock with or without notice to the creditors. I didn't notify creditors"—something missed.

"Hoffman: The truth was he got a hold"—something missed—"you can't change it like some of the fellows"—something missed. 1279

"Schulman: At least ask for an inspection of the premises."

Hoffman's reply was missed.

"Schulman: I think it's funny business every bankruptcy petition"—something missed—"those things took me years"—something missed—"a seventy-five dollar"—something missed.

"Hoffman: See if that thing is in order.

"Schulman: So you said you'd get on to it. It took me years to get on. Let me tell you another thing. I don't know now how the average practitioner shows as much honesty and sincerity as you have exhibited in this case. 1280

"Hoffman: There is a case we are able to recover about twenty thousand dollars of the stuff, and then a restitution was made to the extent of about eight thousand dollars in cash. I can get myself a nice fee."

Mr. Fielding: Obviously, that has no connection with this.

The Court: Yes.

Mr. Fielding: I ask that it be stricken out. 1281

The Court: Yes. Very well, I will sustain the objection. Strike that out.

A. (Continued) "Schulman: How often do you get these cases?"

Mr. Fielding: The same goes for the next three or four statements.

Mr. Walsh: How far down do you want to go, Mr. Fielding?

Mr. Fielding: The entire conversation down to

1282 "(Conversation interrupted by someone in the office who wants stamps)."

Mr. Walsh: You mean "Schulman: You have here a list of creditors.

"Hoffman: Yes."

From there on?

Mr. Fielding: Yes.

The Court: Very well. It will be stricken out down to that point.

What is the question that it starts from?

Mr. Walsh: It is stricken out from "Schulman" down to "Schulman: You have here a list of credi-

1283 tors."

The Court: Very well.

A. (Continued) "Hoffman: Yes.

"Schulman: I mean to say, on the list of creditors you indicate any other liability of personal loans except those $300.

"Hoffman: No. You haven't got the claim of the mother of the assignor or sister.

"Schulman: O.K.

"Hoffman: In that connection, I have an affidavit—

1284 whether she wants to waive the claim for about $1200"—something missed—"and the mother"—something missed—but the sister in her affidavit says that the mother will waive the claim.

"Schulman: We don't care about that.

"Hoffman: I made that bill of sale subject to a second mortgage or conditional bill of sale which is on the cash register. Is that all right?

"Schulman: How much is the balance?

"Hoffman: I think there is a balance due on the cash register of about $60.

"Schulman: All right, that's fine.

"Hoffman: You say you're getting sixteen hundred? 1285

"Schulman: Fifteen or sixteen hundred.

"Hoffman: Listen, bum, is there any more that you're getting out of this—on the level? I mean without a smile.

"Schulman: Seriously, I'll show you. You shouldn't have any doubts. I'm glad that you're frank about it.

"Hoffman: Yes, I want to be frank about it.

"Schulman: The thing is worth fifteen hundred dollars and I'm not getting a dime more or less. The only thing is this. Fishbaum said it—I don't know 1286 how sincere he is about it— that there is somebody that wants to give sixteen. I want to give it to my man and so I'll put it up to him. I'll say, I don't want to let anybody grab it. I want you to give him sixteen."

Mr. Walsh: May I interrupt here, that the name "Fishbaum" means "Wishbow" because they are evidently talking about the auctioneer.

Mr. Fielding: I will concede it.

A. (Continued) "Hoffman: But the way it is, if it's only worth fifteen, then you're sticking him if you are asking him to give you sixteen. Now if he gives you sixteen, 1287 he's not doing it just because your name is Schulman. It must be worth sixteen to him.

"Schulman: No.

"Hoffman: Isn't that the logical conclusion?

"Schulman: No. There is always room for the $100 on top.

"Hoffman: Well, why wouldn't the bum offer that in the first place?

"Schulman: No. I'll tell you why. They figure

1288 they should make two hundred or two hundred fifty on the stock. They're entitled to it just like you're entitled to one hundred or so a week. So they're entitled to their dough. They work for it. They're getting caught every day in the week."

The Court: What page are you on now?

The Witness: This is the bottom of page 7.

The Court: Very well. We will take a few minutes' recess of this case while I call the calendar for the day.

The jury may be excused for a few minutes.

(Short recess.)

1289

By Mr. Schachner:

Q. Mr. Bodinger, will you please read again from the bottom of page 7 where it says "Schulman"? A. Yes, sir.

"Schulman: No. I'll tell you why. They figure they should make two hundred or two hundred and fifty on the stock. They're entitled to it just like you're entitled to one hundred or so a week. So they're entitled to their dough. They work for it. They're getting caught every day in the week. So they figure I'll make a half. I don't know how good

1290 Fishbaum's man is for sixteen hundred dollars. If it's necessary to meet competition, he will. I'll give you an idea"—something missed—"around twenty-four now this competition for the lower end, just like Fishbaum says he's give sixteen. I says, counsellor, somebody is giving twenty-six." —something missed—"suppose he goes six hundred fifty or seven. He says, when it comes to competition and I want that stock, make it thirty-six, but I want it, see.

"Hoffman: What's the reason for that?

"Schulman: Simply because.

"Hoffman: In other words, if it's a good thing, he wants to let the other fellows in the same business know that when he wants a certain stuff he'll get it or he will make them pay for it? 1291

"Schulman: No. The first supposition was correct. In that particular stock, the point is that he has some stock that will fit in nicely with that stock. In other words, it's worth a few dollars more than it is really worth. It's worth to him a few dollars more because it fits in with the stock that he has. They buy stock every day in the week. So he says, because of the competition, I'll give you sixteen.

"Hoffman: Listen, maybe this guy—maybe he'll go to seventeen. 1292

"Schulman: No.

"Hoffman: I'm only kidding.

"Schulman: I know, but I'm giving you a serious instance. When I do business with them, I want him to make a dollar. There's no use of being"—something missed—"if I have to knock out my own people for whom I"—something missed.

"Hoffman: You say he's going to pay $1600?"

Schulman's reply was missed.

"Hoffman: He's going to pay it?" 1293

Schulman's reply was missed.

"Hoffman: How the hell is this going to be split up? You say Goldman is going to get one hundred and a quarter, is that right?"

Schulman's reply was missed.

"Hoffman: We'll sit down and give a few dollars to Fishbaum, right?

"Schulman: We'll also take care of any contingency that you may be responsible for, such as the rent. You will meet the charge.

"Hoffman: Kolman said, he said, I'm not giving

1294 the keys up until there is an order of the Court which discharges my liability as an assignee from the bond and in every other respect.

"Schulman: Right.

"Hoffman: Well, she doesn't want to get into any of these complications.

"Schulman: I want him to be that way because after all he is a lawyer and I'm a lawyer. Then we'll also take off something for"—something missed.

"Hoffman: You mean these three monkeys that you got there, these bums?

"Schulman: Yes.

1295 "Hoffman: I thought you're taking care of them from your end. Wait a second. I thought you're taking care of them from your end.

"Schulman: Not from my end. I'll tell you why.

"Hoffman: Wait a second. If I'm figuring to get one hundred and a quarter, and you also, and Goldman is going to get $25, what the hell is Goldman getting for all the time he spent?

"Schulman: All right. If you want to give him twenty-five, all right.

"Hoffman: If I give him twenty-five, so all I got left is one hundred. So in order to take care of

1296 Gabe Fishbaum, I have to cut off some money. So in the final analysis I'll get out of this about half of what I would have gotten in an ordinary administration.

"Schulman: But if you wound up in bankruptcy you would have gotten fifteen bucks.

"Hoffman: Listen, for the work that was done up to the filing of the petition, I'd get fifty dollars with banks.

"Schulman: What did you do?

"Hoffman: I prepared whatever papers were necessary.

"Schulman: Usually"—something missed. 1297.

"Hoffman: An order of sale. How about the preparation of the assignment itself?

"Schulman:"—beginning was missed—"everybody knows.

"Hoffman: How about the time I spent going up to Rikers Island, spending about three hours, from nine o'clock at night to twelve o'clock?"

Schulman's reply was missed.

"Hoffman: There wasn't"—something missed—"there was a hurry there in order to conserve the assets.

"Schulman:" —beginning was missed—"takes me 1298
five minutes.

"Hoffman: You got to wait for a ferryboat to come in and then you got to wait on the other side for a ferryboat to leave. You can't take a ferryboat every two or five minutes.

"Schulman: The Court will allow"—something missed.

"Hoffman: How about the time spent in the creditors' meeting? How about the time spent in the store premises in connection with the appraisal? You don't think I'd get $50 at least?

"Schulman, in telephone conversation, stated: 'No, 1299
he didn't get here. You call me tomorrow, around 2 o'clock. O.K. No, I tell you I think we are nearing a settlement where you can get the premises within even less than a week. Well, I wouldn't say that, within about a week. Yes. Right.'

"Schulman: I still want to show you why you wind up"—something missed—"in other words, if we give creditors 40% that's $1000, isn't it?

"Hoffman: 40 per cent is a thousand dollars.

"Schulman: Say we give Fishbaum $100.

1300 "Hoffman: How are you going to give Fishbaum $100 where we're figuring one hundred and a quarter at least?

"Schulman: Let us say"—something missed.

"Hoffman: You're right. There are other expenses. There is a bond. I think we figured the assignee expense at $50. That's $1175.

"Schulman: Right.

"Hoffman: Let me see, that would leave how much? That would leave about—how about some reserve for the landlord. The landlord is raising hell about the store.

1301 "Schulman: How much is that?

"Hoffman: Seventy-five dollars a month rent.

"Schulman: Is there a month?

"Hoffman: Certainly. March 24, and now the whole month of April. So he is a preferred creditor for more than a month.

"Schulman: So figure him for $75. That's twelve fifty. That leaves $350 for the three of us, am I right?

"Hoffman: Yes.

"Schulman: I didn't figure anything for the bank.

1302 "Hoffman: Listen, you can take care of these guys.

"Schulman: No.

"Hoffman: Goldman is getting $25 and he has $25 expenses.

"Schulman: Do you want to listen for a minute? If I can get him fifty"—something missed.

"Hoffman: Why give him $50? How about $30. Ten dollars a piece. So if you give them $15 a piece, there is a hell of a lot of difference between fifteen and ten?

"Schulman: Yes. 1303

"Hoffman: What's the difference, a five spot?"

Schulman's reply was missed.

"Hoffman: How the hell are you going to work that?

"Schulman: Just a minute. I'll show you something. Take off the $1250. Let's say $75.00 from the creditors.

"Hoffman: Which creditors?"

Schulman's reply was missed.

"Hoffman: That's too much. If they get $50 it would be plenty.

"Schulman: Just let's figure that way. I figured 1304
I had thirty or thirty-five dollars cash expenditures."

Hoffman's reply was missed.

"Schulman: Wait a minute. That makes $1360, right?

"Hoffman: Right.

"Schulman: That leaves you $240 between three fellows, let's say. That's $80 a piece"—something missed—"$300.

"Hoffman: For the claim against the city.

"Schulman: That's $180 a piece.

"Hoffman: I see. Leaving off the other disputed 1305
claim of about $200 that's against the city. There is a disputed claim of about $200. You mean leave it go?

"Schulman: Leave it go. I'll tell you another thing.

"Hoffman: Settle it for $50.

"Schulman: You mean give the client the $50?

"Hoffman: No, give the city the $50.

"Schulman: Which $300? You mean that's in dispute? Oh, I see what you mean.

"Hoffman: There are two distinct claims against

1306 the city. One that apparently is a good one. Vouchers that were accepted after the disturbance, after the incident for which the debtor was arrested; and another group of claims which were as a result of vouchers received before he was arrested, and which I think was the subject matter of the arrest.

"Schulman: Right.

"Hoffman: So one apparently is undisputed and the other one is disputed.

"Schulman: Yes.

"Hoffman: So in connection with the claims that are not disputed, that I think amounts to $250, $300.

1307 "Schulman: Is there a sales tax due from Hymowitz to the city?

"Hoffman: That may be. I think you have it on the list there.

"Schulman: There is no amount.

"Hoffman: Well, we don't know. It may be a couple of dollars.

"Schulman: I said that from the $300 that you do collect a couple of dollars"—something missed.

"Hoffman: I see.

"Schulman: I'm only figuring the city sales tax which is $300. If we get five, that's fine.

1308 "Hoffman: You mean you divided three ways whatever is received from the city.

"Schulman: And if we only get three, three hundred from the city, we make $180 a piece, which is more than what you would have made in any other event.

"Hoffman: How are you going to get the money in from the city, because under this bill of sale, he sells only the fixtures and the merchandise.

"Schulman: Right.

"Hoffman: That leaves the claims against the city.

"Schulman: Could you get him to sign"— 1309
something missed.

"Hoffman: I didn't get it. I was only told to get the bill of sale and the affidavit. So I have to get another instrument?"

Schulman's reply was missed.

"Hoffman: That I can mail in to him and ask him to send"—something missed.

"Schulman: Write out and say sales"—something missed.

"Hoffman: You mean it may not be assignable?

"Schulman: Not that kind.

"Hoffman: Well, let me ask you this: In case 1310
he asks me, make a claim against the city.

"Schulman: If the check would be made payable to the assignee.

"Hoffman: When he is discharged, he must hand that over to the assignor, isn't that so?

"Schulman: Yes.

"Hoffman: That would be one of the provisions.

"Schulman: I don't know just how the city will treat it. I don't know.

"Hoffman: I mean this: Supposing we make an application to withdraw the assignment proceedings 1311

"Schulman: Right.

"Hoffman: But in the interim, the city pays over to the assignee the money.

"Schulman: Yes.

"Hoffman: The order to dismiss the assignment proceedings would provide for a turnover of the money to the assignor, isn't that so?

"Schulman: Correct.

"Hoffman: Whatever the case may be?

"Schulman: Yes.

"Hoffman: Now when is this fellow Abramson going to pay over the money?

"Schulman: His money is as good as in your pocket.

"Hoffman: You want me to hold this bill of sale, or what?

"Schulman:" —beginning was missed—"so far my petition, it's in form"—something missed.

"Hoffman: Wait a second. You think I'm going through all this paper work for eighty dollars or one hundred dollars? You think I'm going to bother much more with this? I'm sick and tired of this.

"Schulman: I'll tell you what I'll do. Martin or I will do the paper work and deliver it to your office.

"Hoffman: Now so far as the money on that is concerned, who is going to hold on to the money?

"Schulman: Ordinarily—

"Hoffman: I'll tell you frankly, I'd like to hold the money if I gave you a receipt for it.

"Schulman: If the petition should be dismissed"—something missed.

"Hoffman: The only thing is, I hate to let it slip out of my hands. Is there any way it can be deposited in a special account to be withdrawn only by you or myself?"

Schulman's reply was missed.

"Hoffman: As far as myself, the whole amount involved is $80. If anything goes wrong, I have got to make good to the assignee, and I'll tell you frankly, so far as Fishbaum is concerned, I have got to look out for him too. That is the way I do things, because when I told Fishbaum that he'd be paid for his time and for his expenses, that he disbursed, he's been damned decent. I know he's worked hard.

"Schulman: Let me ask you this." —something missed—"understand? So, I got more at stake than you got. I'll tell you why"—something missed—"take

care of the creditors. I don't want to let my peti- 1315
tion be dismissed until"—something missed.

"Hoffman: " Listen, you have certain things to worry about and so have I. Is there any way that we could deposit this in an account just to your name and my name?

"Schulman: I'll tell you what I'll do. When I get the money, I'll give you a receipt for $1250. The balance"—something missed.

"Hoffman: Can you get Fishbaum's money and Kolman's money and my money?

"Schulman: In adyance"—something missed.

"Hoffman: In connection with the balance"— 1316
something missed.

Schulma reply was missed.

"Hoffman: Let's see how it will work out.

"Schulman: You got to have some kind of trust in somebody.

"Hoffman: As far as myself, the whole thing amounts to eighty, ninety dollars.

"Schulman: I'm not interested in yourself or myself. I have too many similar transactions where I can afford to have creditors or lawyers, or auctioneers. A little fellow like Fishbaum never knows"— 1317
something missed—"the whole city through the underworld channels or among the auctioneers' channels would know. What's more, I'd last exactly thirty minutes with that kind of a reputation. If I tell you $1000, it's $1000, you understand? You got to have some kind of trust in this thing"—something missed.

"Hoffman: When do you expect to get the money? I'll talk it over with Cohen. When do you expect to get the money from the buyer?

"Schulman:" —beginning was missed—"call up

318 my party and tell him"—something missed—"I'll give you a receipt for $1250 to be applied toward the settlement with creditors and the distribution of whatever there may be.

"Hoffman: Because I mean, you get $1250 and the creditors get so much, and then, not that you'd do it. Goldman might say, the hell with this guy Hoffman, you know what I mean?

"Schulman: That's exactly what I think. You're all right and don't need to have any worries about it because I'll be in control in this picture rather than Goldman. I do tell you this: You will have no 319 difficulty with him or me, but I'm not even suggesting it because in this picture, let us say it so happens that I'm in the middle. Maybe it is to be that way. I can have the money in less than an hour.

"Hoffman: I go to get back. I got an appointment at the office at 6:30. Saturday night I was in the office until 10 working on adjustment papers. All day Monday"—something missed.

Schulman's reply was missed.

"Hoffman: No, a bulk sale.

"Schulman: Why do you have to work so hard?

320 "Hoffman: No, it wasn't that, about fifty papers, affidavits.

"Schulman: In substance, it was repetitions of one thing.

"Hoffman: No, no. Some were claims there. There were several claims held by the same party, and they had to be"—something missed.

"Schulman: Well, I'll tell you, if you want to send"—something missed—"petition"—something missed—"reorganization"—something missed—"or whatever it is, as a rule, ninety-nine out of one hundred, secured proof of claim, unsecured proof of

claim, all that"—something missed—"call me up and I'll give you the"—something missed. 13

"Hoffman: In other words, you want to give me a receipt for"—something missed—"I think I made it $1200."

Schulman's reply was missed.

"Hoffman: I'll tell you frankly, because in the first place, all"—something missed—"without even getting the money the fellow executed a bill of sale, and as a matter of fact"—something missed.

"Schulman: I don't want to have any possible thought on your part"—something missed.

"Hoffman: You say you can get the money at an hour's notice? Well, don't get it now because I'm going to beat it. I'll tell you what I'll do. Are you going to be in the office around 12 or 1 o'clock tomorrow, and you can get it in an hour's notice? 132

"Schulman: I can telephone him now and he'll be here tomorrow.

"Hoffman: I'll be here with the papers and fill in his name. You say this form is—

"Schulman: Very good. I just want to show you something. Ordinarily, why would that fellow give me $1250 and $1600 without even a bill of sale or anything. 132

"Hoffman: Wait a minute, here's another thing. I had this run-in with Goldman and Goldman is sore, and he may want to be sore, and then there is Kandell and then you told me what Kandell would do to try and strip me because I don't know much about it."

Schulman's reply was missed.

"Hoffman: You said that if we made those arrangements at the meeting. You remember at that first meeting? They'd take advantage of every situation.

1324 "Schulman: I told you all that just to keep you, how you should look at things. But I didn't tell you that for the purpose of"—something missed.

"Hoffman: All right. I'll be down"— something missed.

Schulman's reply was missed.

"Hoffman: From the city sales tax"—something missed.

"Schulman: Would that be all right with you?

"Hoffman:" —beginning was missed—"all right, we'll work out some receipt that will be satisfactory.

1325 "Schulman: I'll tell you what you do if you like, so as not to have any"—something missed.

"Hoffman: All right, I'll dope it out. Try and get it tonight, or the first thing tomorrow morning. Good night. You're going to call your man and have the money over.

"Schulman: O. K.

"Hoffman left the office at 6:14, P. M."

The Court: I have an appointment for about ten minutes so we will now take a short recess.

(Short recess.)

By Mr. Schachner:

1326 Q. Will you now read from Government's Exhibit 18-A, which is the transcript of a conversation of April 26, 1937? A. Yes, sir.

(Reading) "(The conversation began at 5:07 P. M.)

"Hoffman: It was all I could do to get down here.

Schulman's reply was missed.

"Hoffman: Is that that colored fellow down from Georgia way?

"Schulman: Five to four. Was your man served with a subpoena or anything?

"Hoffman: No, not that I know of. 1327

"Schulman: Look, did you have subpoenas issued or did the court issue it.

"Hoffman: So you didn't give it to him. The marshal wouldn't send it"—something missed—"but you didn't?

"Schulman: I don't know.

"Hoffman: You don't know whether you gave it?

"Schulman: I didn't hand it"—something missed.

"Hoffman: What do you mean"—something missed—"the petition and then they issued a subpoena at the time the petition is filed. Martin Goldman wouldn't have that served unless you okayed it. He 1328
wouldn't follow this unless you told him what to do. No, I mean so long as they came up, he wouldn't go through until you okayed it.

"Schulman: Right.

"Hoffman: Did you get the dope?

"Schulman: Yes.

"Hoffman: I'll tell you. I spoke to Gabe Wishbow and he made his peace with you, and he says that that would be straightened out. You told him it would be straightened out when the whole thing was closed and whatever monies were to be divided 1329
would be divided and he would be satsified?

"Schulhan: Right.

"Hoffman: So I spoke to him and he got more"—something missed—"about it than I did. I asked him what to do and he suggested that the $1600 be deposited to our account.

"Schulman: He suggested that?

"Hoffman: Call him up and see.

"Schulman: I think he's foolish. We should deposit $1600? You don't want to let your man. Him, he's supposed to have more sense than to make a crack like that. I think he's insane.

1330 "Hoffman: Get the guy over here"—something missed.

Schulman's reply was missed.

"Hoffman: For what? For the bill of sale? You'll give me a receipt for the bill of sale?

"Schulman: Yes.

"Hoffman: And that bill of sale won't be turned over until when?

"Schulman: Until first, the petition in bankruptcy is dismissed; until the assignment is dismissed; and until I receive twelve hundred or twelve hundred—

1331 to be distributed to a list of creditors pursuant to an initial listing made by Mr. Robert Hoffman"—something missed.

"Hoffman: How about the releases?

"Schulman: All checks made payable that is to be sent to the creditors hereunder are to be endorsed, 'Same is in full payment of any and all claims.'

"Hoffman: That doesn't have the status of a general release. Where is that release coming through, that forty per cent business?

"Schulman: All checks are to be so endorsed and

1332 payments to be made to all creditors.

"Hoffman: That's right. Kandell and Cohen and Goldman can get those consents from most of them and you can get them from the balance.

"Schulman: O. K. You're right.

"Hoffman: Now what about your four hundred?

"Schulman: Three hundred.

"Hoffman: Four hundred. Sixteen and twelve."

Schulman's reply was missed.

"Hoffman: What about depositing that?

"Schulman: That goes"—something missed.

"Hoffman: Can I get a note for the goddam thing

for my share. I mean for my share and Wishbow's share?" 1333

Schulman's reply was missed.

"Hoffman: I better call Wishbow on the wire because I told him I wanted his O. K. before I went ahead. I don't like to do anything without"—something missed.

Schulman's reply was missed.

"(At 5:13 P. M. Hoffman made the telephone call.)

"Hoffman: Wishbow? Jake. Say, I'm over in the office and there has been some talk about that money in connection with the sale. Now I suggested to him, as you said, that the full amount of 1334
sixteen be put up and deposited in a joint account between him and myself, and he says that is out of the question. He then said he would give me a receipt for the $1200, you know, which is the amount set forth in the bill of sale. Hello. And I suggested that he give me a note to cover your share, the assignee's share, and my share out of the $400. You see what I mean? So he says he wouldn't do that. You got any other suggestions? I don't know much about this business. He says he has the money. Wait a second."

1335

Apparently speaking to Schulman.

"Wishbow wants to know whether you'll pay us our proportion of the share now?

"Schulman: No. I wouldn't touch a dime out of this money and nobody else will.

"Hoffman: (Over the telephone) He says he won't pay that out now. That's what I want to know. I want to know why I can't hold the sixteen hundred dollars and give him my receipt. Hello. Give him my receipt for the twelve hundred dollars or even give him a receipt for the sixteen. I don't

1336 know. (To Schulman) You want to talk to him?

"Schulman: No, I don't want to.

"Hoffman: Talk to him. He's all right.

"Schulman: I don't want to talk to him.

"Hoffman: (Over the telephone) Hold the wire a second. (To Schulman) Go on, talk and see what it is.

"Schulman: He tells me over here that I'm going to give a receipt for sixteen hundred.

"Hoffman: (Over the telephone) Hello, wait a second. This isn't Jake. Wait a second. Hold the wire.

1337 "Hoffman: (To Schulman) He wants to know whether you want to talk to him.

"Schulman: Explain to him"—and then apparently he took the telephone—

"Hello. Since when do you want me to open a joint account in this case? Yes. You don't see why not? You mean you can tell a lawyer why you can't see why it shouldn't be a joint account? Why? For Christ's sake, this fellow Hoffman handled less than half a dozen assignments in his life, can see the point in two minutes and you can't after being years with Harry Rothenberg? I'm

1338 going to make distribution to my creditors, and the twelve hundred dollars you're going to be given a receipt for that. If I'm not no good in that regard, don't do any business with me. I'll tell you this much. If you ask any auctioneer with brains how to handle it—

"Hoffman: Wait a second, let me talk to him. (Takes telephone) Hello, Gabe, listen. I tell you what. I think it would be all right to get the receipt from Schulman and then in connection with the four hundred that he is holding—wait a second

now—the four hundred that he'd be holding, to- 1339
gether with what ever allowances would be made out of the twelve hundred, then we could all meet at a certain time and distribution would be made. I know I'll have to do running around. What the hell! The only thing is I don't want to do anything unless you O. K. it. That's all. Wait a second. I don't want you to waive anything. (To Schulman) Can he get his disbursements?

"Schulman: He can't get a dime. I won't take my disbursements. I got disbursements too. What's he talking? I got disbursements too. I wouldn't 1340
take a postage stamp.

"Hoffman: I don't know what to say.

"Schulman: If he don't trust Martin Goldman or me or you, tell him to go to hell. That's all.

"Hoffman: (Over the telephone) Wait a second. (To Schulman) Is his disbursements to come out of the twelve hundred?

"Schulman: The disbursements come out of the whole pot that we mentioned here a while ago.

"Hoffman: (Over the telephone) He says you'll have to wait for that.

"Schulman: First you have to dismiss the bank- 1341
ruptcy.

"Hoffman: (Over the telephone) He wants to dismiss the bankruptcy, dismiss the assignment, and then pay the creditors their forty cents on the dollar.

"Schulman: Wait a second. You have to get his consent to a dismissal of the petition in bankruptcy.

"Hoffman: He says you don't require that. Now how about the dismissal of the petition in the assignment?"

Schulman's reply was missed.

1342 "Hoffman: Hello. He thinks that it isn't necessary. Listen, I'm not arguing the point. You understand, you can say I didn't want to turn over any papers unless I got your consent. In other words, at least the disbursements you want.

"Schulman: I wouldn't give him a dime.

"Hoffman: Why don't you give him the disbursement?

"Schulman: I can't. Should I take from my $35?

"Hoffman: (Over the telephone) Gabe, I think it will be all right. You know"—something was missed—"Wait a second you can't dismiss the peti-
1343 tion one, two, three. You got to make a motion in order to show cause so it still will take two days, right? Yes. I don't know what to do. You better straighten it out with him. He says that he will pay you the disbursements and also a certain amount. Wait a second.

"Schulman: I don't take any credit for myself. I told him the other day sitting there at the table with you"—something missed—"He wants to be a * * * let him be.

"Hoffman: (Over the telephone) You hear what
1344 he said? He said the same as he told you. He said there isn't any fixed amount that you're to get above your disbursements; that he and Martin Goldman and you and myself will sit down at a table when this thing is disposed of; and that will all be gone over and you'll be satisfied. Listen, as far as I'm concerned, here's the way it was explained to me. First, wait a second. The disbursements are paid in full. Hello. The disbursements are paid in full. Then after that Martin Goldman and Schulman and myself are to get an equal share. Before we divide that three ways, you are to get

a reasonable amount for the services which you rendered as an auctioneer. In addition to the disburseiments, and that will be argued out over the table. Hello. Is that satisfactory? All right then. It's all right to get the receipt for the bill of sale? All right." 1345

The telephone conversation ended at 5.20 p. m.

"Hoffman: I don't want anybody to say"—something missed.

"Schulman: So we'll dictate a receipt."

Schulman then called in his stenographer and dictated:

"Received from Robert Hoffman, 1270 Broadway, receipt covering"—and a good deal of the dictation was too low to be heard then, and continued: 1346

"signed and acknowledged. And to transfer to the purchaser of said property pending dismissal of bankruptcy proceedings"—and the balance was missed.

"Hoffman: Wait a second. Aren't we supposed to get a fee out of that? A. $2,500 fee?

"Schulman"—something missed—"read that back please."

Then the stenographer read back but it was too low to be heard.

"Hoffman"—something missed—"technically speaking"—something missed. 1347

"Schulman: All right leave out the"—something missed.

"Hoffman: This is another"—something missed.

"Schulman: I'll sign the first part and he'll sign the last part, and you can make it in triplicate.

"Hoffman"—something missed—"I mean call him up anyway.

"Schulman: I think his name is Louis Wein."

5:30 p. m. Schulman made a phone call.

1348 "Hello. Mr."—something missed"—get your papers ready"—something missed—"you want to put"—something missed, and the balance of the conversation couldn't be heard.

"Hoffman: I had in mind originally when you made the suggestion"—something missed.

"Schulman: Yes.

"Hoffman: In other words, she has got the papers to dismiss the petition and also the assignment.

"Hoffman: This is the first night I'm going home early.

"(During the balance of"—

1349 Mr. Walsh: That is irrelevant.

Mr. Fielding: I think that is.

The Court: Eliminate that.

A. (Continuing) "Hoffman: You mean you banked that money without"—something missed—"who is this fellow Wein?"

Reply was missed.

"Hoffman: You mean he works for"—something missed—"He uses the name of Louis Wein. Who is he and what is he"—something missed—"is that

1350 340 Grand Street"—something missed—"430 Grand Street"—something missed—"what do you mean, the distribution of the money"—something missed.

"Schulman"—something missed—it will be ready tomorrow, everything.

"Hoffman: "You mean we can obtain the assignment"—something missed.

"Schulman: Miss, what's that word in the last paragraph?"

Schulman then apparently dictated some additions or changes to the receipt which could not be overheard.

Mr. Walsh: That is out.

A. (Continuing) "Hoffman"—something missed—"I'll 1351
tell you, the expenses are pretty big. Martin Goldman worked it out and the other fellow"—something missed—"is there so much work"—something missed.

"Schulman: Would it be all right if we"—something missed.

"Hoffman: Take that off.

"Schulman: Suppose I give you a receipt"—something missed.

"Hoffman: The order discharging the assignee"—something missed—"purchase it without any fear of"—something missed. 1352

"Schulman"—something missed—"your man from removing it to a public warehouse.

"Hoffman: A public warehouse and transportation and all that"—something missed.

"Schulman: If your purchaser"—something missed.

"Hoffman: And they gave me a receipt for it I, wouldn't worry about it.

"Schulman: For each and every item. You can check this catalog and double check it."

Hoffman's answer was missed.

"Schulman: It's a fair deal.

"Hoffman: I'm talking about responsibility. 1353

"Schulman:"—something missed—"I knew that you'd be here and all that but"—something missed—"because you don't fuss around with these things.

"Hoffman"—something missed—"true, but"—something missed"—you say Goldman will have the signature tomorrow?

"Schulman" Tomorrow.

"Hoffman: I'll make sure that"—and that is all that was heard.

The Court: Any further direct examination of this witness.

1354 Mr. Schachner: That is all.

Mr. Fielding: I would like to renew my motion again to strike out the testimony on the ground that only parts of the conversations were transcribed and read.

The Court: I will overrule the objection as a general objection. It is true that parts of the conversation are unintelligible, and if a specific objection be made to any particular one, upon that ground, upon its face that it was not unintelligible, why, I will sustain the objection to that. As I announced originally upon the ruling, there are parts of the
1355 conversation that are competent to go to the jury and the weight of those conversations is for the determination of the jury. So as a general objection I will overrule your objection and allow you an exception.

Mr. Fielding: Exception.

Of course it will take some time to pick out individual parts where the garbling is so evident that perhaps an objection like that would be sustained. Can't I reserve my right at this time?

The Court: Yes, you may reserve your right to any particular part or any particular conversation
1356 or part of a conversation to which you wish to move to exclude it at any time. I will permit you to do that and I will hear you. As I stated, parts of this conversation, I think, are competent. There are parts of that that I think are irrelevant and immaterial and without any weight one way or the other, but upon a general objection, part of it being competent and part not, I will overrule the entire general objection with leave to you or right to you at any time, if there is any particular part of it that you desire to move to strike it out, and I will permit you to make the motion.

Mr. Fielding: I have no further questions. 1357

The Court: Any questions of the witness?

Mr. Corbin: No.

The Court: Very well. Stand aside.

(Witness excused.)

LOUIS ABRAMSON, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. Walsh:

Q. Mr. Abramson, what are your duties in life? What do you do? A. I was formerly an auctioneer. 1358

Q. And specifically in 1937 were you an auctioneer? A. Well, I purchased stocks of merchandise.

Q. Well, could I classify you as such, an auctioneer? A. Well, if you want to, yes.

Q. Well, would that be correct? A. No, it wouldn't.

Q. What were you? A. Just a cash buyer at that time.

Q. And you attended, of course, auction sales? A. Yes, sir.

Q. And purchased the stock of a store that had a little difficulty because it couldn't pay its bills, etc:? A. Yes, sir.

Q. That is what your business is? A. Yes. 1359

Q. And where was your place of business, sir? A. At 430 Grand Street.

Q. And was anybody associated with you? A. At that time I was associated with my father, and there was another gentleman by the name of Mr. Samuel Lieberman.

Q. Lieberman? A. Right.

Q. Do you know a man by the name of Jacob Schulman? A. Yes, I do.

Q. And how long have you known him? A. Three or four years.

Q. Prior to 1937? A. No.

1360 Q. When did you first meet him? A. Oh, around 1936, 1937.

Q. And do you know a man by the name of Morton Goldman? A. I have met the gentleman.

Mr. Walsh: There is no question about the identity of any of these gentlemen on that question, is there?

Mr. Fielding: Not as far as Mr. Schulman is concerned.

Q. Do you know Mr. Morton Goldman, a lawyer? A.
1361 Yes.

Q. And how long have you known him? A. About the same time.

Q. Right in around that time? A. That is right.

Q. That you met Mr. Schulman? A. Yes.

Q. And do you know a man by the name of Mr. Theodore Goldman? A. I don't think I have ever met him; no.

Q. Now, do you know a man by the name of Mr. Kandell? A. Yes, sir.

Q. And did you also know him in and around the same time that you knew Schulman and Morton Goldman? A. Well, I met Mr. Kandell before I met them gentlemen.

1362 Q. About how long prior to that time? A. Oh, about two or three years prior to that time.

Q. Do you also know a person by the name of L. Wein? A. Yes, sir.

Q. And who is he? A. He happenes to be a brother-in-law of mine.

Q. And during 1937 how old was he, if you know, at that time? A. I should judge around 20, 21.

Q. And during March specifically—and April and May, up to and including June—where was Mr. L. Wein? A. At the University of Salem, West Virginia.

Q. Now did you ever, Mr. Abramson, use the name of L. Wein in the purchase of stock of a store? A. I have a number of times. 1363

Mr. Walsh: That is all.

Cross examination by Mr. Fielding:

Q. Did you inspect this stock at the Army and Navy Store—

Mr. Schachner: Your Honor, I object to this question as not being proper cross-examination. Mr. Abramson has not been asked that on direct examination. 1364

The Court: Does the rule of law apply in criminal cases that you may cross-examine only about things brought out on direct examination.

Mr. Schachner: Your Honor, we shall withdraw the objection, and we can then cross-examine the witness ourselves. We have no objection.

The Court: Well, I will let you, on redirect, inquire about things brought out on cross-examination, but now if you mean with reference to—

Mr. Walsh: We withdraw the objection.

The Court: Very well.

(Question read.) 1365

Q. (Continuing)—in question that belonged to Hymowitz? A. Yes, I did.

Q. At whose request did you examine that stock? A. Well, I think it was Mr.—the concern of Cohen & Kandell.

Q. And Kandell? A. Cohen or Kandell.

Q. It wasn't Mr. Schulman? A. No, it was not.

Q. And how much of an experience have you had in this line? A. Well, I have been buying stocks of merchandise for the last ten years.

1366 Q. And you went over this stock of Hymowitz's at the request of Kandell or Cohen? A. Yes, sir.

Q. In March of 1937? A. Yes, sir.

Q. And what was your opinion of the sale value of that merchandise? A. Well, I think I offered around eleven or twelve hundred dollars for that stock of merchandise.

Mr. Fielding: That is all.

Mr. Walsh: Are there any more questions?

The Court: They are conferring.

Mr. Walsh: Oh, I am sorry.

1367 Cross examination by Mr. Corbin:

Q. Mr. Abramson, did you ever talk with Mr. Morton Goldman or Mr. Theodore Goldman about the stock at the Army and Navy Store on the Bowery? A. No, I never did.

Q. And after your offer of eleven or twelve hundred dollars for the stock there was some additional talk about an additional $300 to cover relief tickets, was there not? A. I think there was a mention of that.

Mr. Corbin: That is all.

1368 Cross examination by Mr. Mintzer:

Q. Did you have a talk, Mr. Abramson, with anybody, whether it be Mr. Cohen, Kandell, Schulman or Goldman, that you would make one bid on the record and one bid off the record? A. I don't understand that question, sir.

Q. Well, did you have a talk with anybody that you make an official bid of, say, $1200 or $1500, and then actually pay a larger amount of money? A. No.

Mr. Mintzer: That is all.

Mr. Walsh: I would like to inquire further, if your Honor please.

The Court: Yes.

Redirect examination by Mr. Walsh: 1369

Q. Mr. Abramson, do you know Mr. Juskow of the Department of Justice? A. I have met the gentleman, yes.

Q. Of the Federal Bureau of Investigation? A. Yes.

Q. And is that he, who is sitting at the counsel table there (indicating)? A. Yes, sir.

Q. And in November of 1939 did you have a conversation with him? A. I just couldn't tell you when it was but I know he was over to my place of business.

Q. Well, did you have a conversation with him prior to 1939? A. Well, he was only over to my place of business once. 1370

Q. And that is the only time that you ever had a conversation with him? A. The first time?

Q. Approximately how many times did you have a conversation with him? A. Oh, about three times.

Q. Now the first time that you talked with him he asked you what was the amount that you had made for the offer of the goods in the Hymowitz store at 346 Bowery, didn't he? A. At the time he was over at my store?

Q. Yes. A. No. I think he asked me what wholesale inventory there was in that store.

Q. And did you know what wholesale inventory was at that time? A. Well, I told him I should judge there was 1371 approximately between two thousand and twenty-five hundred dollars.

Q. That was the wholesale inventory. A. That's right.

Q. And that was $2000 or $2500 for the goods that were in this store of Paul Hymowitz at 346 Bowery? A. That was wholesale inventory.

Q. And that was after, of course, that you had made an inventory of the goods yourself? A. Well, the figures, sort of, yes.

Q. Yes. How many times were you looking at the goods down at 346 Bowery? A. Only once.

1372 Q. Only once? A. That's right.

Q. And with whom did you go down? A. I happened to be closing a deal of a store at—

Q. I said, with whom did you go down? A. I went down with Mr. Lieberman and another attorney.

Q. Well, who was the other attorney? A. Well, I happened to be closing a deal up on 41st Street, if you want me to come to that.

Q. Yes. I would like his name. A. And I happened to buy a store on Castle Hill Avenue—

Q. Well, can you give us the name of the attorney with whom you went down? I am very anxious of course to
1373 hear some other time about that other deal, but now I am asking you who was the attorney. A. I think his name was Mr. Mormen.

Q. Mormen? A. M-o-r-m-e-n.

Q. And where is he located? A. He was formerly at 41st Street and Madison Avenue.

Q. You were not down there with the defendant Schulman? A. No.

Q. You are positive of that? A. Yes, sir.

Q. Did Mr. Lieberman ever go down and examine the store alone at any time that you know of? A. Not that I know of.

1374 Q. Now do you remember the date, and have you refreshed your recollection as to the day that you went down to the store at 346 Bowery and looked the goods over? A. Well, I think it was around March 31st.

Q. Could it have been April 7th or April 8th, 1937? A. No, I don't think so.

Q. You are sure of that? A. I don't think so.

Q. And you say you were down there only once? A. Yes, sir.

Q. To whom did you tell that you figured that these goods were worth from two thousand to twenty-five hundred dollars?

Mr. Fielding: I object to that question. 1375

Q. (Continuing) If anybody?

Mr. Fielding: The witness did not so state. He said "an inventory value".

The Court: Yes, but he has qualified it now "if anybody". If he did tell, now of course the question is, did he tell anybody that it was worth two thousand or twenty-five hundred dollars.

The Witness: No, sir.

Q. You never told that to anybody, to Mr. Juskow? A. I told Mr. Juskow that the wholesale inventory was around 1376
two thousand to twenty-five hundred dollars.

Q. Now my next question is this: Did you tell anybody else, if you can remember at this time, besides Mr. Juskow, that you had given this stock a wholesale inventory of approximately anywhere from two thousand to twenty-five hundred dollars? A. No, sir.

Q. You kept that a secret?

Mr. Corbin: Well—

Mr. Walsh: I will withdraw it.

Q. Now you testified on cross examination by Mr. Fielding to the effect that you thought that the goods—or that 1377
you made an offer of anywhere from eleven to twelve hundred dollars, is that correct, for the stock? A. Yes.

Q. That is approximately 50 per cent? A. Something around that figure.

Q. To whom did you tell that figure, if anybody? A. Well, I called Mr. Cohen of Cohen & Kandell back.

Q. That is a firm, Cohen & Kandell, is it not? A. That is right.

Mr. Mintzer: I object. There is no evidence at all that there is a firm called Cohen & Kandell.

1378 The Court: Yes.

Mr. Walsh: I withdraw it.

Q. It is known as the Association of Drygoods and Furnishings, is that correct? A. Yes, sir.

Q. And who in the firm did you speak to when you gave the price of eleven to twelve hundred dollars for the stock? A. I am not quite sure who I told it to. I know it was one of the gentlemen.

Q. Well, could it have been Mr. Kandell? A. It could.

Mr. Mintzer: I object to what it could have been.

1379 The Court: Yes; I sustain the objection.

Q. Do you know anybody else down there in the Drygoods Association other than Mr. Cohen and Mr. Kandell? A. No, I don't.

Q. Did you ever have a conversation with Mr. Schulman concerning the price that you would give for the merchandise at 346 Bowery? A. No, I don't think I did.

Q. You don't think you did? A. I don't think I have.

Q. And you deny it at this time? A. Yes, sir.

Q. Now you mentioned something about the relief tickets. Who asked you about the relief tickets when you gave this price of eleven or twelve hundred dollars? A. I think Mr.

1380 Cohen of Cohen & Kandell.

Q. You can't distinguish? A. No, I couldn't.

Q. Well, did you say either Mr. Cohen or Mr. Kandell told you that there were also some relief tickets there? A. I think there was a mention of them.

Q. Were the relief tickets incorporated in the offer of eleven or twelve hundred dollars? A. I don't think they were, no.

Q. That was separate and distinct? A. That's right.

Q. Now you remember—and I show you this paper—

Mr. Walsh: Please mark this for identification. 1381

(Marked Government's Exhibit 22 for identification.)

Q. (Continuing) —and ask you whether or not you recognize that signature at the bottom of the first page? A. Yes, sir, that's my signature.

Q. And do you also recognize the signature on the second page? A. Yes, sir.

Q. And you swore the contents of that were truly before Leonard J. Juskow, an agent? A. Yes, sir.

Q. And also Sidney Rubenstein, is that correct? A. Yes, 1382
sir.

Q. Do you remember on November 29th, 1939, you made a statement—and tell me whether or not the statement as I read it to you was true—

Mr. Corbin: I object to this method.

The Court: Yes. I will sustain the objection.

Mr. Walsh: Well, I offer it in evidence.

Mr. Corbin: I think we ought to have a right to see it.

Mr. Walsh: I have no objection to that, Mr. Corbin (handing).

(Mr. Corbin examines document.) 1383

The Court: Is there any objection?

Mr. Corbin: Yes. We object to it. It does not contradict anything the witness has said.

Mr. Walsh: Well, that is not a proper ground for objection, if your Honor please.

The Court: I just asked him if there was any objection.

Mr. Walsh: Oh, I am sorry. Then I withdraw my commentary.

The Court: Very well. I will read it to see

1384 whether there is any objection to it. (After examination): I will sustain the objection.

Mr. Walsh: If your Honor please, the reason I am offering this in evidence is that I merely request the opportunity to use this to question the witness because I claim surprise. I asked this witness whether knew L. Wein and he said he did, and he described him. We then desisted and we asked him no further questions. However, on cross examination certain matters were gone into by the defendants which are, as I claim, contradictory to the statements contained in this and I mean at this time to

1385 ask him whether or not the statements contained therein are true at that time, and if they are I would like to find that out from this witness, because I contend that the defendants opened the door by their cross examination so that I may go into this new matter.

The Court: I don't think so. I think I will adhere to my ruling. I will sustain the objection.

Q. Did you ever talk on the telephone concerning this matter of Hymowitz with Mr. Schulman? A. Well, I think I did.

1386 Q. And what was that conversation? A. Well, about a year or two years ago I retained Mr. Schulman as my attorney in a few matters.

Q. I am calling your attention, Mr. Abramson, to on or about March, April or May of 1937. Did you ever talk to Mr. Schulman concerning this particular matter, referring of course to the matter of Hymowitz at 346 Bowery? A. 1937 or 1938 you asked me?

Q. No. 1937. A. I don't think I have.

Q. April, May or June? A. I don't think so.

Q. You never spoke to him on the telephone in April of 1937? A. I don't know; I don't think so.

Q. Are you ever called by Mr. Schulman "Mr. A" over the telephone? A. I don't know; I couldn't answer you. 1387

Q. Well, just see if you cannot refresh your recollection by looking back over some of the telephone conversations that you may or may not have had with Mr. Schulman, and tell his Honor and the jury whether or not you were ever called "Mr. A" by Mr. Schulman? A. I can't answer that. I may have.

Q. You may have, but you don't deny that he never did call you "Mr. A"? A. Well, I can't deny it; no.

Q. So it is possible that on occasions he did? A. Yes.

Q. Now did you ever speak with Morton Goldman over the telephone concerning this matter? A. No, sir. 1388

Q. Of Hymowitz. A. No, sir.

Q. How many offers altogether did you make for the goods at 346 Bowery? A. (No answer.)

Q. I will withdraw that question. Let me put it this way: Did you make more than one offer for the goods at 346 Bowery? A. I think I have.

Q. How many offers? A. I just couldn't tell you. I know I made more than one offer.

Q. And to whom did you make the offer? A. To Mr. Cohen or Mr. Kandell.

Q. Either one or the other? A. Either one or the other.

Q. Did you ever make the offer to Mr. Schulman? A. I don't think I have. 1389

Q. Well, will I take from "I don't think I have" that you may have? A. No.

Q. Does that refresh your recollection? A. No, I did not make no offer.

Q. You never did? A. No.

Q. That is a positive denial? A. Yes.

Q. And you are sure of that? A. I am almost positive.

Q. Well, if you will say "positively" I will take your word for it. A. (No answer.)

1390 Q. Did you ever discuss the name of L. Wein with anybody concerning this case? A. Yes.

Q. With whom? A. With the FBI men and Mr. Schachner.

Q. Anybody else? A. Well, I gave Mr. Cohen and Mr. Kandell the name of L. Wein.

Q. In other words, if they accepted your offer they were going to insert into the bill of sale the name of L. Wein? A. That is right.

Q. And you have used that on many occasions, have you? A. I have.

Q. Do you remember the prices of the various offers
1391 for this stock that you made? You say you evaluated it—or I will withdraw that until you answer the first question. A. Well, around eleven, twelve hundred dollars.

Q. Which offer was that, the first offer? A. I think that was the first offer, yes.

Q. Now did you up or down your second offer? A. Well, I think I upped my offer.

Q. How much did you up it by? A. I just can't remember.

Q. Well, would it be $50? A. Well, I don't know. I just can't remember.

Q. I mean, does that refresh your recollection? A. No.
1392 More than that, sir.

Q. How much more? A. I just couldn't remember.

Q. Well, would it be—say, for instance, if the first one was twelve, would the second one be sixteen? Does it go that far, if that refreshes your recollection? A. I just can't remember just what I offered on the second offer.

Q. When you were talking to Mr. Juskow didn't you tell him that on the second offer that you offered either $1800 or $2000? A. When was that, sir?

Q. When you spoke to Mr. Juskow. A. Never did.

Q. Of the Department— A. Never did.

Q. You deny that absolutely? A. Yes, sir. 1393

Q. That you never told him on the second offer you offered them from $1800 to $2000? A. Never did.

Q. We will take one first. Did you ever tell him that you made an offer of $1800? A. No, sir.

Q. Did you ever tell him that you made an offer of $2000? A. No, sir.

Q. Did you ever tell him that you made an offer of $1700? A. I don't think I have; no, sir.

Q. How about $1600? A. I don't think I have.

Q. But you did make a second offer? A. Yes, sir.

Mr. Walsh: That is all. Thank you, Mr. Abram- 1394
son.

Recross examination by Mr. Corbin:

Q. Just one question: That wholesale inventory figure of $2000 or $2500, that meant cost, didn't it? A. That is manufacturer's cost; yes, sir.

Q. That is, cost to Hymowitz? A. Yes, sir.

Q. And you saw from the stuff itself in the store that a lot of it was not seasonable at that time of the year, wasn't it? A. Well, every store has that.

Q. And there was a lot of shop-worn stuff there? A. Well, every store has that. 1395

Q. So that the cost did not, in your opinion, at the time represent the true value?

Mr. Walsh: I object to that, if your Honor pleases. That is argumentative.

The Court: Yes. I will sustain the objection.

Mr. Corbin: All right. That is all.

Mr. Walsh: That is all. Thank you.

(Witness excused.)

1396 HAROLD P. TURNER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Schachner:

Q. Mr. Turner, you are a special agent of the Federal Bureau of Investigation, are you not? A. I am.

Q. As such were you present in Room 1508 of 277 Broadway on April 7, 1937? A. I was.

Q. Did you listen by a listening device to a conversation taking place in the next room? A. I did.

Q. Was Mr. Bodinger, a stenographer, there, too? A. Yes, sir.

1397 Q. Was he also listening? A. He was.

Q. And was he taking down the conversation in shorthand or by stenotype machine? A. He was using a stenotype machine.

Q. Now, did he shortly after that listening transcribe his stenotype notations into intelligible writing? A. He did.

Q. And did you look at the transcript shortly thereafter? A. Yes, sir.

Q. About what time was it after the conversation took place? A. I believe he transcribed his notes on the following day and I read them at that time after they had been transcribed.

1398 Q. You read them on the following day, is that your testimony? A. Yes, sir.

Q. And at the time that you read them was the transcript in accordance with what you had heard? A. Substantially so, yes, sir. There were minor variations, yes, as to occasional names. He had a person here speaking—he had the name down wrong, and then I think in one part of it he had 346 Broadway and it should have been 346 Bowery.

Q. But apart from the small variations the transcript corresponded with your own recollection? A. Yes, sir.

Q. You had listened in court while Mr. Bodinger read

his transcript, and that was the transcript which you had seen, isn't that so? A. Yes, sir. 1399

Q. And you were also present on April 14th while Mr. Bodinger was taking down a conversation, were you not? A. I was.

Q. And that is in the same place, 1508, Room 1508 of 277 Broadway? A. Yes, sir.

Q. Did you also read that transcript? A. I did.

Q. And when did you do that? How long after the conversation had taken place? A. I believe that was the following day, too.

Q. And did you find that transcript to be correct also? A. Yes, sir. Well, with minor discrepancies but it was substantially correct. 1400

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. Are you the fellow who arranged with Hoffman to go there and try to trap Schulman?

Mr. Walsh: I object to the word "trap", if your Honor please. If the defense at this time is going to turn around and claim "entrapment" I wish Mr. Corbin would so state now, if that is the defense. 1401

The Court: Well, I will overrule the objection.

Mr. Walsh: I now object and I ask that the word "trap" be stricken out. I object to the characterization.

The Court: Well, for the second time I am going to overrule that objection.

Mr. Walsh: Then I withdraw the objection.

The Court: It is pretty well developed as to what was done, so I will let him use the word "trap" if he so desires.

You may proceed.

1402 A. I did not make the arrangements.

Q. I mean, listen in on the other side of the wall. A. No, I did not make the arrangements.

Q. Some superior of yours gave you instructions to go in there and listen? A. Yes, sir.

Q. And did you fix the stuff up on the wall and in the wall apparatus through which the conversations were to be recorded? A. No, I did not.

Q. Well, you helped to do that, didn't you? A. I was present.

Q. Well, went in there at night and fixed it up, didn't you? A. Not on this particular occasion.

1403 Q. Which— A. Which occasion are you speaking of?

Q. Well, I am talking about the night of April 6th, the night before April 7th when you started listening. A. There was a set installed on the night of April 6th, yes, sir.

Q. And you got in there without Schulman knowing anything about it, didn't you?

Mr. Walsh: If your Honor please, we object at this time. The preliminary hearing had gone into that, and I now object on the ground that this is immaterial and irrelevant at this time, as your Honor has already decided that point.

1404 Mr. Corbin: I am attacking credibility, if your Honor pleases.

Mr. Walsh: That has nothing to do with his credibility.

The Court: I will overrule the objection. It, at least, is competent, and I will overrule the objection.

Mr. Walsh: If it is on credibility I will withdraw the objection.

Mr. Corbin: When he is overruled he quits.

Mr. Walsh: No, if your Honor please. I think my objection in the first instance was proper.

The Court: Yes. I understand your objection as made.

Mr. Walsh: And if it is made on the ground of credibility I will withdraw it, so that we understand each other. 1405

The Court: I will overrule the objection; it being withdrawn, of course that eliminates it, and it will eliminate any further discussion of it.

Gentlemen, at this time I will say that I have an uptown engagement, so we will take a recess until 2.20. I will be back here at 2.20.

(Recess until 2.20 p. m.)

AFTERNOON SESSION. 1406

HAROLD P. TURNER, resumed the stand.

Cross examination continued by Mr. Corbin:

Q. You went in there the night before the 7th of April, didn't you? A. Yes, sir.

Q. And you went in without Schulman's consent? A. Yes, sir.

Q. And without any effort made to obtain that consent?

Mr. Walsh: I object to that, if your Honor please. That calls for a conclusion. He does not naturally know whether he got consent or not. 1407

The Court: Well, I will let him answer if he made any attempt to obtain consent.

The Witness: I didn't.

Q. You made no efforts and no one else made any efforts insofar as you know? A. Insofar as I know.

Q. Your instructions were to get into that place, without Schulman's knowledge, was it not? A. Permission had been received to enter the office.

Q. From Schulman? A. No, sir.

Q. Or anyone representing him? A. No, sir.

1408 Q. What you did was to go to the superintendent and show your authority and persuaded him to tell the night man to let you in? A. I did not.

Q. Your partner did? A. Somebody from my office did, yes, sir.

Q. It certainly was not from Schulman that you got that consent? A. I think not.

Q. And under those circumstances, as you knew them, that is entry was made without Schulman's consent in the night time; you knew, did you not, when you went in there, and when I say "there" I mean Schulman's private office, you were doing an illegal act?

1409

Mr. Walsh: I object to the form of the question.

The Court: Sustained.

Mr. Corbin: I respectfully except.

So that the record may be clear may I ask a more direct question, because I want to make a point of this?

The Court: Yes.

Q. Did you or did you not know or believe when you entered Schulman's private office that night that you were doing so without right?

1410

Mr. Walsh: I object to the form of that question, if your Honor please, too.

The Court: Yes. Objection sustained.

Mr. Corbin: I respectfully except.

Q. You say that the following day you read Bodinger's notes that he transcribed, that is the day following the day that he took them down? A. I believe it was.

Q. That would be on the 8th? A. I believe it was.

Q. And did you yourself make any notes? A. Well, I believe I did, yes, sir, a few.

Q. When did you make your notes? A. Well, listening to 1411
the conferences.

Q. When you were listening? A. Yes, sir.

Q. In what form were they? A. Just very brief pencil notes.

Q. Did you after making those notes make any other memorandum as to what you heard over the earphones? A. I dictated a memorandum, yes, sir.

Q. When? A. I believe on the day following, on the 8th.

Q. The same day that you read Bodinger's notes? A. Yes, sir.

Q. Before or after you read his notes? A. Before. 1412

Q. Have you those pencil notes and that memorandum that you dictated? A. They are in the files of the Federal Bureau of Investigation.

Q. May I see them?

Mr. Walsh: I am going to object to this.

The Court: Objection sustained.

Let the record show you have not referred to those notes since you have been on the witness stand.

The Witness: No, your Honor.

The Court: Or while on the witness stand?

The Witness: No, sir. 1413

The Court: Objection sustained.

Mr. Corbin: I claim, and I make this statement only for the purpose of raising the point, any memorandum made by a witness at the time should be handed over for our inspection when it relates, as it is shown here to relate, to the conversations that the witness said he heard over the telephone, and which he has described as correctly reflectly in Bodinger's typewritten transcript.

The Court: I will let you make your statement. I will adhere to my ruling.

1414 Mr. Corbin: Thank you.

Q. Did the notes that you made square exactly with what Bodinger wrote on the typewritten transcript?

Mr. Walsh: I object to this as immaterial at this time.

The Court: Objection sustained.

Mr. Corbin: Exception.

The Court: I believe I will overrule that objection and let him answer.

Q. (Read.) A. There were possible variations.

1415 Q. There were variations? A. He heard one thing and I heard another.

Mr. Corbin: I press my previous request and claim as a matter of absolute right to inspect what the witness wrote at the time and which he now says varied from what Bodinger's transcript reflects.

The Court: He stated he heard one thing and Bodinger another. I will adhere to my former ruling but permit you to cross examine the witness orally about what if anything his recollection shows; but his inspection of the memorandum that he made, the witness not having used it to refresh his recollection, I still rule it is incompetent, and an inspection of them should not be granted, but you can cross examine him about it.

1416

Mr. Corbin: My request was not a mere idle curiosity. I requested that inspection for the purpose of using the paper in cross examination and of course ordinarily to determine whether or not it is usable for that purpose.

The Court: Overruled. I deny your request.

Mr. Corbin: And I respectfully except.

Q. Can you tell us without the aid of the memorandum 1417
that you made at the time, what that memorandum contains? Can you recite it for us? A. I had very little of the conversation in.

Mr. Corbin: I move to strike out the answer as not responsive.

The Court: Yes.

Mr. Schachner: I would like to object to this question on the ground what the memorandum contains may be hearsay.

The Court: Well, as long as the question is that he wants to know whether or not he could recite the 1418
contents without reference to the memorandum, I will overrule the objection.

Mr. Schachner: I misunderstood the question, your Honor.

Q. Yes or no? A. Yes, sir.

Q. That is, you have such a photographic memory as you sit there now that you can see those pencil notes you made at the time, three years ago, and recount to us exactly what you then wrote, is that right?

Mr. Walsh: I object to the characterization "photo- 1419
graphic memory".

The Court: Overruled.

Q. Is that right, yes or no? A. No.

Q. So that as a matter of fact it is impossible for you now to tell us exactly what that memorandum contains, the one you made at the time? A. I read the memorandum a few days ago.

Q. Did I ask you that? A. I don't know.

Q. Let me ask you again: It is not possible, is it, as you sit there now, for you to recite to us exactly what that memorandum contains?

1420 Mr. Walsh: I object to the form of the question. He asked him what it contains. After he asks him then he can formulate his own opinion. I object to the form of the question.

The Court: Sustained.

Mr. Corbin: On the ground I am asking for an opinion?

The Court: On the ground that you are asking for possibilities that are too remote.

Q. Well, can you or can you not now recount to us, if you were asked to do so, understand, just what those
1421 pencil notes state with reference to the conversations that you heard over the earphones when Bodinger was taking them down?

Mr. Walsh: First I object to the form of the question; and on the second ground, a proper foundation has not been laid for this particular question. He has not asked him what was the conversation, what did he hear and what did he do.

The Court: I overrule the objection. Counsel on cross examination can always test the witness's memory. I will let it go in as competent.

1422 A. No, I could not relate it word for word.

Q. You do however recall sufficient of its contents in order to state to us that it varied somewhat at least from the typewritten notes transcribed by Mr. Bodinger? A. Yes, sir, slight variations.

Q. I said is that right? A. Yes, sir.

The Court: Do you have that memorandum with you?

The Witness: No, sir.

Mr. Corbin: I ask leave to inspect it.

The Court: Do you have it, Mr. District Attorney?

Mr. Walsh: They are in the files of the Attorney General of the United States, your Honor. 14

Mr. Corbin: That is our Government the same as yours.

The Court: Not in your possession in the courtroom?

Mr. Walsh: No, but if you instruct us to get them I will get them.

The Court: I won't instruct you to get them now, but if you have them here in the courtroom I will examine them to determine whether or not they should be submitted. I don't think that they are competent. I don't think as a matter of right or law that he is entitled to them, but if you do have them here, why unless there were some confidential communications which should not be disclosed I would probably permit him to inspect. 142

Mr. Walsh: There is no basis for his inspection yet. He has not used them on the witness stand.

The Court: That is the theory on which I am making my ruling, not having used them on the witness stand. I will adhere to my ruling, since they are not in the courtroom, and deny your request.

Mr. Corbin: I understand the theory and it is with that I specifically disagree, and that is the ground of my objection. 142

The Court: Yes; I will allow you an exception.

Q. What is the fact, Mr. Turner, were those pencil notes marked for identification in this case? A. No, sir, I believe not.

Q. At a prior hearing? A. I think not.

Q. Produced by you, were they not, and marked here?

Mr. Walsh: I object to this as incompetent, ir-

1426 relevant and immaterial. That question has already been ruled on by your Honor.

The Court: That is true, but I will overrule your objection upon the ground that a witness's memory may be tested.

Mr. Walsh: If he is going on the credibility theory.

The Court: That is the theory.

Q. What is your answer to that? A. No.

Q. You were examined at a preliminary hearing in this matter, were you not? A. Yes, sir.

Q. And you produced some pencil notes on a yellow piece
1427 of paper, didn't you? A. I don't believe I produced them.

Q. Well, they were produced by a superior officer here from the files, into which files you placed them, is that right? A. I believe they were produced by Mr. Walsh or Mr. Schachner.

Mr. Walsh: We are not superior officers.

Mr. Corbin: Well, all right.

Q. Don't you recall his Honor looking at them to see whether or not he would rule one way or another on an objection? A. Probably he did.

1428 Q. And you heard Mr. Walsh's statement just now that they were in the hands of the Attorney General of the United States? The fact is they were here in this courtroom a couple of days ago, to your knowledge? A. Yes, they are now in the files of the Federal Bureau of Investigation.

Q. Well, one of the representatives of that Bureau, in charge of that file, is sitting right here at the counsel table?

Mr. Walsh: I object to that as argumentative. There is no question about them being produced in the courtroom on one occasion. That was in the preliminary hearing, without the presence of the jury.

and in order that your Honor could get all the information at that time. That was the only reason they were produced. 1429

The Court: Objection sustained.

Mr. Corbin: If we get to a point where papers marked for identification in this case are said to be in the hands of the Attorney General, and the assumption seems to be in the statement made by Mr. Walsh that they are not available here, I think I have a right, on the attitude of counsel and on the part of the Court, that they are available, that they must be available for any use that may be properly put to them in this case and on this trial. Now that 1430
does not mean that simply because they were marked for identification here that they are competent, but at least we ought to be able to pass the question of their presence and availability here in this trial. I think under the circumstances—and I submit respectfully—that I shouldn't be left in the air with a statement that they are in the files of the Attorney General. I should have it clear and I should be entitled to have this record clearly mirror the circumstance—

The Court: Some of the papers that I examined 1431
before were what I regarded as confidential communications between the various officers, that threw no light upon this case one way or the other. I don't recall particularly—

Mr. Corbin: That is another point.

The Court: This memorandum that you are talking about now—there were so many produced, but if the District Attorney has them available, I will examine them again, and if there isn't anything that appears in those papers that I thought would be divulged in private communications between investi-

1432 gating officers of the Government, why, I would let you inspect them; not that I think they are really competent. I think the rule of law is well laid down that you are not entitled to an inspection of memoranda unless the testimony shows that the witness has used the memoranda to refresh his memory while on the witness stand, but if you can get those, Mr. Walsh, I would like to see them again.

Mr. Walsh: I have already sent for them, if your Honor please, and when I said they were in the possession of the Attorney General, Mr. Corbin knows as well as I do that they are with the Department of
1433 Justice. They are upstairs in the building, and you saw them before.

Mr. Corbin: That is why I cannot understand. As questions are put—

The Court: Very well. I will send for them. I am going to reserve ruling upon your request until I can see them. So if there is anything further than you can proceed with, with this witness while they are being sent for at this time, go ahead.

Mr. Corbin: Nothing.

The Court: Any further redirect examination on
1434 the matters that have been gone over?

Redirect examination by Mr. Schachner:

Q. You think, Mr. Witness, you would have received permission to hear this conversation had you requested it from Mr. Schulman? A. I believe not.

Mr. Schachner: That is all.

The Court: You may stand aside for the present until I decide whether Mr. Corbin is entitled to these papers.

(Witness temporarily excused.)

Mr. Mintzer: Your Honor, the objection that Mr. 1435
Corbin made and the exception granted will inure to us?

The Court: It will inure to the benefit of all defendants.

SIDNEY S. RUBENSTEIN, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. Schachner:

Q. Mr. Rubenstein, you are a special agent of the Federal Bureau of Investigation, are you not? A. Yes, sir. 1436

Q. As such you were present in listening to certain conversations in Room 1508, that is, you were in Room 1508 listening to conversations in the adjoining room on April 7, 1937, April 14, 1937, April 21, 1937 and April 26, 1937, were you not? A. That's right.

Q. And on all those occasions there was with you one, Nathaniel Bodinger, who took down those conversations with a stenotype machine? A. He did.

Q. Is that right? A. That's right.

Q. And did he always on the following day transcribe these stenotype notes into intelligible transcripts? A. He did. 1437

Q. And did you read those transcripts immediately following those conversations? A. In every case.

Q. And did they in every case correctly state what was said? A. They substantially did.

Mr. Corbin: Objection.

The Court: Yes. I will sustain the objection.

Mr. Schachner: I am sorry, your Honor—

The Court: Well, I sustained it upon the ground that he cannot give his statement on the fact or his opinion as to whether or not they stated what trans-

1438 pired. He can state what he heard, or he can state his best recollection of what he heard, but to state a certain thing is correctly taken down when he did not take it down, I think calls for a statement of fact that is not permissible.

Mr. Schachner: I understand your Honor's ruling now.

Q. Mr. Rubenstein, did you hear the same things that were put down in the transcript?

Mr. Corbin: The same objection.

1339 The Court: I will overrule the objection.

Mr. Corbin: Exception.

A. I did.

Mr. Schachner: That is all.

Cross examination by Mr. Corbin:

Q. How long have you been on the job with the Government? A. Since November 4, 1934.

Q. Where do you hail from? A. Maryland.

Q. And is it part of your job to listen in on other folks' business? A. When business is illegal.

1440 Q. And lots of times when it turns out to be legal you find yourself to be listening in?

Mr. Walsh: I object to it as speculative and argumentative.

The Court: Yes, I will sustain the objection.

Mr. Corbin: All right.

Q. What you do investigate is to see whether or not a crime is being committed, is that right? A. Yes, sir, that is right.

Q. You don't know before you commence investigating by these listening devices whether the words that you are going to hear over the dictaphone will or will not reflect a crime, do you? A. Can't tell till you hear. 144

Q. So you went down there to 277 Broadway on April 7th, was it? A. Yes.

Q. Your first visit? A. Yes, sir.

Q. And found on that first afternoon two listening devices installed? A. No, sir.

Q. You did not? A. No, sir.

Q. Didn't find one with a wire through a hole in the wall, did you? A. There was a microphone in the wall, a little aperture in the wall. 1442

Q. Communicating with a wire? A. Yes, a small one.

Q. A carbon disc? A. Carbon.

Q. What is that? A. Carbon—c-a-r-b-o-n.

Q. Carbon? A. That is right.

Q. You don't like the way I pronounce that? A. You pronounced it incorrectly.

Q. But outside of that, there was that disc in the wall connected with a wire through it, and there was also the crystal disc that was put on the wall with adhesive tape; right? A. That was put on while I was there.

Q. Well, there were the two instruments? A. That is right. 1443

Q. All right. Were you one of the men that went down the night before and got into Schulman's private office? A. No, sir.

Q. You weren't there that time? A. No, sir.

Q. Well, when you heard whatever you did hear through the listening earphones that day, April 7th, did you make memorandum of what you heard? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. On yellow paper? A. I don't recall the color of the paper now.

1444 Q. Pencil? A. Yes, in pencil.

Q. You wrote those down as the sounds were coming over? A. Yes, sir.

Q. And at the same time Mr. Turner, the last previous witness, was doing the same thing? A. Yes, sir.

Q. Now thereafter you used those notes to dictate a memorandum of what those conversations were, did you not? A. I did.

Q. What? A. Yes, sir, I did.

Q. And that dictation of yours was transcribed? A. Yes, sir.

Q. So that both the penciled notes and the dictated
1445 memorandum that you made at or about the time are extant and in the possession of some of the gentlemen at the counsel table? A. They are in the Bureau files.

Q. All right. Can you recall so that you could tell us here what those memoranda contained, word for word? A. No, sir.

Q. Is it or is it not the fact that they varied from the transcript prepared by Bodinger? A. In some respects they do, yes.

Mr. Corbin: Upon that record, if your Honor please, I make the same request for leave to inspect
1446 the two memoranda prepared by this witness at the time and which, as he says, vary from the Bodinger transcript.

Mr. Walsh: And I on the same grounds as before object, on the ground that this witness has not used any memorandum or any other paper in order to refresh his recollection. As a matter of fact he has not testified that he read Bodinger's transcript over the next day, and thought that substantially agrees with what he heard. The sole purpose that the Government had, in putting these two witnesses on the witness stand, is for the purpose of allowing the

defense to examine them so that they wouldn't say 1447
that we are holding back any evidence. I mean, we are satisfied—

Mr. Corbin: I made no request for their production.

Mr. Fielding: I never made any request.

Mr. Corbin: I am sure Mr. Mintzer never made any request.

The Court: Just a minute, gentlemen. Let me read this over.

Mr. Corbin: And I am sure I didn't hear any of the jurors ask for them.

Mr. Walsh: Well, that is the way the Government 1448
works.

The Court: Very well, gentlemen. Just a minute. Let me read these over and I will rule on the matter. (After examination): You say you object to it?

Mr. Walsh: Yes, your Honor.

The Court: Very well. I will sustain the objection, gentlemen. The court in this circuit has laid down the proposition that unless a witness uses memoranda to refresh his memory while on the witness stand, that opposing counsel is not entitled to the memoranda made at that time unless there is some 1449
reason shown to the court why it should be done. No reason is shown to the court in this particular case why that rule should be varied upon. Nothing has occurred in the trial which indicates to the court that it should be varied upon, and I can very easily see where irrelevant matters and prolongation of the trial would be had without any effective results being obtained from the production, and for that reason I am going to adhere to my ruling and follow the decisions of this circuit, unless something should appear in the trial that would make it show that

450 it was necessary. But nothing of which this court has seen thus far makes the court believe that it is necessary.

Counsel for the defense may cross examine the witnesses, each of them fully, as to their recollection about what occurred or transpired at those hearings, but the rule is that a witness, unless he uses the memoranda, shall not be required to produce it, so I am going to adhere to my ruling.

Mr. Corbin: If your Honor pleases, this memoranda or these memoranda rather—I assume that the ruling applies to all—

451 The Court: Yes.

Mr. Corbin: —were filed in the FBI files and were produced here already for inspection before your Honor. I think the record shows that.

The Court: Yes.

Mr. Corbin: So that my request is not limited to the witness's physical production of them himself at this time. Now, has your Honor in mind—and I will pass it because I don't want to appear to be argumentative, but has your Honor in mind that the record now reveals or shows that these memo-

452 randa made by this witness at the time vary from the notes made by Bodinger?

The Court: Yes. I recall his testimony on that issue. As to there being variances, he heard one thing and the other witness heard another or different parts of the conversations. Now I am going to permit you to cross examine him just as fully as you wish upon what he heard or upon what he didn't hear, but the rule is that when he does not use memoranda to refresh his memory while on the witness stand, that it is not proper for those memoranda to be inspected. So I have reached the conclusion

that the best thing to do is to follow that rule which would be binding upon me. 1453

Mr. Corbin: You see—and this is my last statement, your Honor—

The Court: Go right ahead with your statement.

Mr. Corbin: On direct examination this witness said, over objection and exception, that what he heard squared with what Bodinger's notes revealed.

The Court: I recall what he said, and that is why I am telling you now you may cross examine him on that, but I do not think that makes the memoranda competent.

Mr. Corbin: But to cross examine I want the papers that he wrote down on at the time and that varies with Bodinger's. That is what I have got to be armed with in order to adequately cross examine. 1454

The Court: Very well. I won't argue the matter with you. Don't make your argument to the jury yet, but I am going to rule now that you cannot have the custody or possession or inspection of these memoranda. I will allow you an exception, to each, and now then, you may cross examine this witness, asking him anything you want or recall the other witness and cross examine him in any way you desire. 1455

Mr. Corbin: Well, I am like Napoleon, without a horse. I am just a second lieutenant.

The Court: Very well. Any further cross examination by the defendants?

(No response.)

Redirect examination by Mr. Walsh:

Q. Mr. Witness, do you remember what those slight variations were at this time, in order to keep the record straight? A. In the beginning of the conversation on April 7 Mr. Bodinger had a little difficulty identifying—

1456 Mr. Corbin: This is going to open the door, I suggest. I didn't want to warn counsel because if he goes into it on that score, then I think I have an absolute right—

Mr. Walsh: If he has to refresh his recollection from his notes, yes.

Mr. Corbin: No. If he attempts to give us or he is allowed to give the contents of a written paper then I think I am absolutely entitled to an inspection of that paper.

The Court: I don't understand that he is giving the contents of a written paper. He was asked his
1457 recollection of what was said in that room.

Mr. Corbin: No. He was asked in what respect the paper varied from Bodinger's notes.

Mr. Walsh: Government's Exhibits 18-A, 19-A, 20-A and 21-A.

Mr. Corbin: If your Honor please, let me make myself clear: I don't object to it. I only warn that if that question is persisted in and an answer elicited from the witness, it entitles me absolutely to an inspection of the paper.

The Court: Well, I won't rule on that until I get
1458 to it, but I will say this, of my own notion I will direct the witness that he need not answer as to in what respects it differs, but I will permit the District Attorney or the defense counsel—either one—to ask this witness what he recalls with reference to any conversation about which they want to ask him, but I am not going to permit him to give his opinion as to wherein there were differences and so forth.

Mr. Walsh: I withdraw the question.

Q. You were asked on cross examination by Mr. Corbin whether or not you investigate crimes, and you said you did. A. I do.

Q. Now who instructed you to go over to 277 Broadway, 1459
to Room 1508, and listen in on any conversations that you might hear?

Mr. Mintzer: That is objected to.

The Court: Yes. I will sustain the objection. The question is immaterial. It is what was done.

Q. Had you spoken to Mr. Hoffman prior to the time that you went over to 277 Broadway?

Mr. Mintzer: The same objection.

Mr. Fielding: I object.

The Court: I sustain the objection. 1460

Mr. Walsh: I merely asked him whether he had spoken to him.

The Court: I will sustain the objection as being hearsay.

Mr. Walsh: Will you hear me on that point, if your Honor pleases?

The Court: Yes.

Mr. Walsh: On cross examination Mr. Corbin asked him whether or not he was in the habit of going over there and listening in on conversations. I want to show that at the time that he was instructed to go over there a crime was in the process of being 1461
committed because he knew—

Mr. Corbin: The jury hasn't said that yet, Judge.

The Court: Very well. I will sustain the objection, Mr. District Attorney.

Mr. Walsh: That is all. Thank you very much.

Recross examination by Mr. Corbin:

Q. May I ask you a question: Do you recall on April 7th that Mr. Goldman came in there, or somebody that you thought was Goldman? A. Yes.

1462 Q. On page 16 of this Exhibit 21-A, the Bodinger notes, some time in the proceedings reflected on that page, Bodinger and I agreed that Goldman left the room, although there is nothing specifically there, if you will notice it, which indicates the exact point of his exit (handing to witness).

Do you recall the proceedings reflected on that page? A. Yes, sir, I recall that.

Q. Generally? A. Yes.

Q. Well, after Goldman left did you record anything different, anything in the conversation that occurred between Schulman and Hoffman which differs substantially
1463 from what is reflected in those notes right after Goldman left?

Mr. Walsh: I object to the form of that question. He asked him whether or not he recorded anything different.

The Court: Well, he knows whether he recorded anything different.

Mr. Walsh: Now he is just making another play to get these things by the fact of "recorded."

The Court: I will overrule the objection.

A. I can't say whether they do or not, Mr. Corbin.

1464 Q. After Goldman left and Schulman came back into conference with Hoffman you didn't hear Schulman say anything to Hoffman, in substance or in effect, or in words, that he, Goldman, does not want to talk here, or something of that kind? A. I don't remember it.

Q. Your ears were attuned to the talk in the other room? A. Very intently.

Q. Do you remember Hoffman saying something on the stand like this? A. I don't recall it.

Q. He said when Goldman left and when Schulman came back in, he said to Hoffman, "Goldman does not want to

talk in here," or "afraid to talk"? A. I recall something being said. 1465

Q. You remember Hoffman saying that in this courtroom? You didn't hear anything like that over the phone? A. I don't remember.

Q. There is nothing on there as to that (indicating)? A. If there is anything on there, unless I made some mention of it in my notes, I cannot recall whether I did one way or the other.

Q. So far as that conversation claimed to have occured is concerned, and so far as you are concerned, that is a blank?

Mr. Walsh: I object to that as argumentative. 1466
The Court: Objection overruled.
Mr. Corbin: I guess he understands.

A. There were some things that he could not get. I don't remember him saying it.

Q. You representing our government there, with your earphones keyed to hear what was said and trying to hear at all times what was said, cannot say that Schulman said any such thing to Hoffman? A. I don't remember him saying it.

Recross examination by Mr. Mintzer: 1467

Q. Did you check the statements you recorded with the statements Mr. Turner recorded, the previous statements? A. Checked the statements?

Q. Your statements, how recorded as against the statements recorded by the previous witness. A. I read Turner's statements.

Q. Can you tell the jury if they were checked? A. I would say Turner's and mine were substantially the same.

Q. Would you say that every question and answer or every statement you heard by Schulman and Hoffman were

1468 exactly the same on your statement as they were on Turner's statement? A. Our memorandums that were prepared are not written in the same manner in which the transcript is prepared. We put one word down, and that means a paragraph to us when dictating. I might have one and Turner the other.

Q. When you heard a conversation between Schulman and Hoffman you put down two words? A. Yes, sir.

Q. And then dictated two pages from that? A. Immediately thereafter.

Mr. Mintzer: All right.

1469 By Mr. Corbin:

Q. In this exhibit, Bodinger's transcript, marked Exhibit 21-A, etc. there are some 50 or 51 pages that I counted, and I counted over 350 instances on these 50 pages where there are stars or periods, indicating what Bodinger referred to, as he read them, of something missed or something missing. I don't suppose you can tell us by going through this exhibit how much was missed each time, can you? A. No, sir.

Q. It may have been a few words and it may have been a minute or two of words? A. It would not be a minute or
1470 two. It might be a phrase or several words. In some cases it might have been a sentence or so. I don't remember any instances where a minute or two went by when we didn't get something.

Q. Don't you remember when Goldman came in there and they got disputing as to whether Schulman had lied when he told Judge Coxe what he did, that there was a bitter harangue and a lot of words uttered? A. There certainly was.

Q. And it went over some period of time before anything was recorded? A. Not a period of time. You could hear that they were angry.

Q. They were all talking at once? A. They were all trying to argue and we could not get them all down at the same time. That was the difficulty. 14

Q. What do you say that Goldman said to Hoffman at that time as to whether he lied about Goldman before Judge Coxe? A. I don't remember what Goldman said but he was very angry, according to my recollection.

Q. Do you remember a single word he said independently of your memorandum?

Mr. Walsh: I object to the form of that question, if your Honor please. It calls for a conclusion, "independently of his memorandum." 147

The Court: I overrule the objection.

A. No, sir, I cannot remember anything definitely he said.

Q. That is, you are lost without your memorandum? A. What?

Q. You cannot tell us without your memorandum? A. I would want to make sure of what he said from those transcripts.

Q. The only way you can be sure is by using some paper to refresh your recollection? A. Yes, sir.

Q. Because you have investigated many cases since then? 147 A. Yes, sir.

Q. The only way you can tell us that you heard a conversation three years ago is to refer to notes, what you made at the time; those notes are your best and only guide? A. I would say those transcripts.

Q. The transcripts Bodinger filed? A. They are much more complete.

Q. You knew what you put down at the time, what was said? A. You mean from my pencil notes?

Q. From your pencil notes. A. Yes, sir.

Q. Without those you could not tell us whether or not

1474 you heard parts of that harangue, that are not recorded in Bodinger's notes? A. Yes, sir, I may have put down one word "argument," or something of that sort.

Q. You may have written a lot about it? A. Yes, sir, but I cannot say now.

Q. You cannot tell us that without your original notes? A. You have got the best thing in your hand.

Q. As far as it goes what you wrote at the time we don't know? A. I would say that is better.

Q. You know one thing, and that is that Goldman said to Hoffman, in words or substance, that he lied when he said anything wrong about him before Judge Coxe? A. I don't
1475 remember that.

Q. You didn't hear him say "Why, Hoffman, you are 100 per cent wrong, you are crazy"? A. I don't remember it. He may have said it.

Q. Look at page 5 of this 21-A exhibit, that was right after Goldman came in and the first thing Goldman said, according to that paper, is that he never made a deal with him in his life, wasn't it? A. That is what is in there, and then they started to argue.

Q. And after Hoffman said something, swore, Goldman said "I know damned well it was not the truth, otherwise you sell that stock and prorate that stock for the benefit of
1476 the creditors"? A. Yes, sir.

Q. Doesn't that refresh your recollection that in that period when the transcript here says, at this point, all the parties started arguing, and speaking at once, that while the stenographer could not take it, that you heard Goldman, on plenty of occasions and repeatedly saying to Hoffman, in substance, and in an angry manner that he had never entered into any such deal as he, Hoffman, claimed before Judge Coxe? A. Did he say it repeatedly?

Q. Several times at least. A. I don't remember several

times. When you refresh my recollection with that, if it 147
is in there, I heard it.

Q. But this is good so far and I am asking you in the interim of several minutes, when they were all arguing, and the stenographer could not get it, that you could hear Goldman saying that to Hoffman, in words or substance, not once but several times?

Mr. Walsh: I object to that as assuming a state of facts not in evidence.

The Court: Objection sustained. Counsel has a right to ask him the question whether or not he heard it, but not to assume a few things preliminary to it. 1478
Objection sustained.

Mr. Corbin: Exception.

Q. In that period of time they were arguing for some moments and arguing heatedly, were they not? A. Yes, sir.

Q. During that interval did you hear or not hear Goldman say to Hoffman, in words or substance, "You often lied about me before Judge Coxe, because I never said anything like you claim I said before Judge Coxe, that I said"? A. He may have, but I don't recall it. I won't say that he didn't say it.

Q. Did you hear Goldman at any time while he was in 1479
there say anything at all wrong? A. I cannot say that I did.

Mr. Walsh: Just one question.

By Mr. Walsh:

Q. There was quite a little static on some occasions and you could not hear because of the connections that might be wrong with this crystal set? A. Yes, sir.

Q. And on other occasions the voices were too low? A. Yes, sir.

Q. And on other occasions there were a lot of them talk-

1480 ing at once and you could not get it intelligibly, is that correct? A. Yes, sir.

Mr. Walsh: That is all.

The Court: Stand aside.

(Witness excused.)

Mr. Walsh: May we confer, your Honor, for about two seconds?

The Court: Yes. Do you want to take a few minutes recess?

Mr. Schachner: If you can defer the recess for a while, your Honor, I would like to address a motion

1481 to the Court to the effect that the conspiracy has been proven and therefore all the conversations of the conspirators should be admissible against the other members of the conspiracy.

The Court: Well, I will overrule the motion in that respect. I will rule this, that the conversations or statements made by Goldman, that is Morton Goldman, or Theodore Goldman, or by Schulman, are competent, that one, as against the other, whether made in the presence of the other or not, but as to the defendant Kandell I still reserve my ruling on that.

1482 Mr. Corbin: As to Teddy Goldman, there is not a thing here. There are not any conversations with him.

The Court: I don't want to make any statement in the presence of the jury.

Mr. Corbin: Will you reserve as to him because I think I can convince you. The question is that there is less there than as to Kandell.

The Court: I have followed the questions very closely as to all of them and those statements are competent one as against the other except as to Kandell, and upon Kandell I reserve my ruling at

this time unless the government should produce fur- 1483
ther evidence.

Mr. Walsh: You are going to reserve decision as to Kandell?

The Court: Until the government rests.

Mr. Walsh: The government rests, your Honor. That is the reason for the motion now.

The Court: Let the jury take a recess now.

(Whereupon the jury left the courtroom.)

The Court: I said, Mr. District Attorney, I cannot see where the government has shown a sufficient amount of evidence to go to the jury as to the de- 1484
fendant Kandell. I think I recall well the testimony as to him, because I have tried to follow as to each defendant as the case proceeded, and I do not see where you have ever carried knowledge to him. Of course hearsay statements by alleged co-conspirators could prove the conspiracy entirely, and while that would be sufficient, not having brought any knowledge whatever as to him, so far as I can recall the testimony, I cannot see where you have any case against him.

Mr. Schachner: Will your Honor permit me to argue as to that?

The Court: Yes. I remember he permitted his 1485
brother-in-law to use his name. That is about the only thing I recall that he permitted to be done.

Mr. Schachner: Now, your Honor, the prima facie case against Kandell, apart from the conversations carried on, consist of the following pieces of evidences, which I would like to summarize: The first time the defendant Kandell by independent evidence is proven to have entered the picture of this case is when he, together with the defendant Teddy Goldman, came in, as the government contends, for apparently no

1486 purpose whatsoever, except to try and make himself the co-assignee in this matter. That of itself, in the opinion of the government, shows the acquisitiveness and thought of the defendant. Kandell wanted to make a fee out of that matter. After it became impossible to make a fee, perhaps I should call it in a semi-legitimate manner, because I think that manner of making a fee is not covered by federal law; after that the defendant Kandell enters the picture as one who furnished the premises for the first touch of Mr. Hoffman. It was he, I believe, as the testimony of Mr. Hoffman shows, it was he who was chairman 1487 of the meeting of the creditors during the intermission, and afterwards, according to the testimony adduced by the government, for the first time in our possession, that some amount should be split among the defendants and among Mr. Hoffman—

The Court: Right there, that was never brought home to Kandell anyway, was it?

Mr. Schachner: I believe, your Honor, in the testimony of Mr. Wishbow it was mentioned definitely that while Mr. Wishbow's general recollection as to just what happened was not quite clear, he said expressly that the defendant Kandell was present there.

1488 Now in addition to what I would call his preliminary function in the conspiracy, the government would like your Honor to take into consideration that this conspiracy necessarily required the consent of all creditors, as recited in the indictment.

One of the overt acts of the defendant Kandell consisted in sending out notices and letters urging creditors to accept the proposal, the settlement, that it was necessary for these defendants to put over on the creditors.

Furthermore, I think guilty knowledge as to the

defendant Kandell can be inferred from the fact 1489
that he was one of the persons whom we have seen from the testimony of his own brother-in-law busying himself with furnishing a fictitious name for the purchaser.

Now a fictitious name for the purchaser can have but one purpose. Its purpose was to make it impossible for any creditor to get through to the true purchaser and discover the true purchase price was higher than the one mentioned to the creditors. I think that one piece of evidence alone is possibly sufficiently.

As counsel has just mentioned to me, your Honor, probably in this very entire testimony, that there is 1490
a second bill of sale again in a fictitious name, as Mr. Abramson testified.

The Court: I heard Abramson's testimony as to conversations either with Cohen or Kandell, but that does not mean a thing in the world, unless there is other evidence.

Mr. Schachner: I don't mean to refer to the testimony of Mr. Abramson as incriminating Mr. Kandell directly. I just would like to call your Honor's attention to the importance of the fact that this man went out to get a fictitious name for the purchaser, 1491
because this conspiracy could never be accomplished unless the purchaser was hidden from all the creditors.

Now further to indicate the guilty knowledge of the defendant Kandell, I would like to read to your Honor from one of the Government's exhibits, Exhibit 15, which is properly in evidence and which I believe has been heretofore read to the jury. This exhibit of the government was received by stipulation between counsel.

The Court: I remember it going in.

Mr. Schachner: It consists first of a letter urging

1492 the creditors to accept the settlement that the defendant Kandell readily admits as having sent out, as well as the enclosures, and I would like to read only one of the enclosures which characterizes the conduct of the defendant Kandell. It is dated May 13, 1937.

"Re: Paul Hymowitz, 346 Bowery, New York City, New York.

"Gentlemen:

"Please take notice that the undersigned will purchase from Paul Hymowitz, all of the merchandise con-
1493 sisting of army and navy goods, fixtures, etc., now contained in store at 346 Bowery, New York City, New York, together with any demands, claims, suits and any and all other assets of every kind and nature, subject to any and all liens in or against the same, for the sum of $1500.00 in cash to be paid at the time of closing.

"The closing of the said sale will take place at the office of Goldman, Malter & Goldman, attorneys, 302 Broadway, New York City, New York, on Monday, May 24, 1937, at 9 A. M.

"Very truly yours,

1494 A. Rothlein, purchaser."

Now, your Honor, I submit that the defendant Kandell at that time undertook to send to the creditors a letter allegedly signed by one A. Rothlein, who appears here as purchaser, who has testified here for the record, that he never had the slightest intention of buying the goods, and I submit, your Honor, that of itself is sufficient to connect Kandell with the conspiracy. Surely this man was not on an innocent errand when he sent out the letter—

The Court: I agree with you that probably was not 1495
an innocent errand, but in weighing a case of circumstantial evidence, the government must exclude every reasonable hypothesis than that of guilt.

In sending out the name of a purchaser with a fictitious name, I think that the evidence sufficiently shows that has been done at that time, so too in this case, and other cases, and I might say that is done occasionally to the knowledge of all of us, without any fraudulent intent.

The only thing is that Mr. Kandell attended a meeting, as well as a lot of other creditors, and you could 1496
have indicted them for attending.

The conversation between Goldman and the government witness Hoffman agreed, and the testimony apparently shows that he was not present, nor did he hear at any time any of these conversations.

I have followed the testimony, gentlemen, and I might say to you I always follow the testimony in a criminal case very closely, until sufficient evidence is shown to warrant the belief that a man has committed a crime.

I remember Hoffman testified as to informing Kandell and Teddy Goldman. I cannot exactly say now 1497
what it was, but there was some conversation, which along with the other circumstances are sufficient, in my opinion, to connect or to allow it to go to the jury as to Teddy Goldman; but as to Kandell, while there have been very suspicious circumstances, yet there has not been a thing brought home to him that these people were really conspiring to violate the Bankruptcy Act or enrich themselves fraudulently by use of the Bankruptcy Act. He was, so far as the evidence shows there, but you will have to prove more than that before you can find him guilty of conspiracy. He

498 seems to have had some knowledge of it, so that he at least tacitly entered into the agreement, but I have failed to see, and I followed the testimony closely, there was not one thing that would connect him.

In some ways he could be figured like the stenographers that took the dictation. They possibly may have understood it, yet on the other hand they were simply being used there for a certain purpose. So far there is not sufficient evidence to show that Kandell knew about the sale of the stock of goods at a figure over and above their value and the intention of the parties to divide the proceeds among
499 themselves. There is not a circumstance you can show consistently, certainly to the exclusion of every reasonable hypothesis, to connect him with knowledge of it.

Mr. Walsh: Do you remember the testimony of Theodore Goldman? Mr. Hoffman testified to the effect that on March 24, 1937, Mr. Theodore Goldman called him up on the telephone and then he said subsequently he would come over to see him on the next day. I think the testimony is on page 72 of the record:

"Q. What did they say to you when they came
500 there? A. Well, Mr. Goldman said he thought it would be a good idea if he were retained as attorney and Mr. Kandell as co-assignee."

The Court: That is what Goldman said.

Mr. Walsh: And Mr. Kandell was present, because Mr. Kandell was present with Theodore Goldman when he gave him the two papers which are Government's Exhibits, 1 co-assignee and 2 co-attorney—

The Court: Now on the face of it that does not indicate an illegitimate act.

Mr. Walsh: I understand that, and Mr. Kandell was present when it was said a petition in bank-

ruptcy would not be the best thing for the creditors. 1501
This is all the conversation between Kandell and Theodore Goldman and also Hoffman, and he told me, if the creditors had any idea they were going to file a petition in bankruptcy that would not be the best thing for the creditors.

Subsequently on page 73, he is now relating the conversation:

"As a matter of fact, I asked him (meaning Theodore Goldman) whether he knew some man, some attorney by the name of Robert P. Levis, and he said he did. I told him I would call Mr. Levis up. He is 1502
an outstanding authority on bankruptcy and I would put a call in to Mr. Levis. When I got through talking with Mr. Levis, I told him there was no necessity for having a co-attorney or co-assignee in this estate.

"As a matter of fact, both of them said I ought to think it over and they would see me before the meeting took place at the Dry Goods Association."

In other words, they gave the indication to Mr. Hoffman at that time that they were contemplating filing a petition in bankruptcy and he had better think it over, so far as making them co-assignee and co-attorney. 1503

That is the first time they got into it. There is a divergence of opinion, so far as the testimony is concerned, that Hoffman said it was out in the hall and Mr. Kandell was not present. However, Wishbow testified that Kandell was present when Mr. Morton Goldman said to these other creditors, because Hoffman told them, after he told them 80 per cent or 80 cents on the dollars, what are we going to do with the creditors? And it was then said, Throw them ten dollars apiece. That is the time that Wishbow testi-

1504 fied that he would throw these creditors a ten dollar bill apiece.

Now Hoffman said he was present at that conversation. So far as the sworn testimony of Wishbow was concerned, he was present at the conversation, and I have that, if your Honor please. I will read that portion—.

The Court: What did he state, that he would throw them $10 apiece?

Mr. Walsh: The testimony is to the effect that after the meeting was over and after the conversation was had between Mr. Morton Goldman, Hoffman and
1505 Wishbow out in the hall, then they came back and they subsequently had more meeting with the creditors. Then all the creditors went out and Mr. Wishbow testified to this effect, that there was then Mr. Morton Goldman left, Hoffman, Kandell and himself, and at that time Hoffman asked Morton Goldman, "What are we going to do about these creditors? They are the ones that have heard all about how much assets there are, and what are we going to do with them?" And that is the time when he said, "All right, we will just throw them a $10 bill." Kandell was present at that time.

1506 What I am trying to do, if your Honor please, is to show you that right at the first meeting, when Theodore Goldman called up, the first person whom he brought around—that was to the effect that Mr. Kandell was going to be the co-assignee, and if my memory serves me correctly, his name was written in when he took this note over, which would indicate that he went in with the purpose, and then as soon as he comes in there with this paper—and I will read it to you:

"The undersigned"— 1507

The Court: That is all right; you don't have to read that. They could have gone there—they could go there with legitimacy and argue with them, "If you don't appoint a representative of our creditors as co-assignee, we are going to throw you into bankruptcy."

Mr. Walsh: There is no question of that, and I agree with your Honor 100 per cent, but when they come to the second point, and then they start saying, and they indicate, "If you don't come along with me we will have to file a petition in bankruptcy." That 1508
is the second conversation, when Kandell was over there with Theodore Goldman on the first day when they were there. Now that is the first threat. Up to and including that point I think everything was legitimate and we cannot infer anything from that. I agree with your Honor, but subsequently I find after that, at the meeting the next day, Kandell is in the office and in the room with Morton Goldman.

The Court: I got the impression—if you can lay your hands on that testimony there, that will be a strong circumstance. Kandell heard him say, "What are you going to do with these creditors 1509
here?" And he said, "Oh, we will fix them $10 apiece and they will get out of the picture."

That would be a very strong circumstance but I got the impression from the testimony all the way through that Kandell had not heard anything which would indicate the unlawful agreement.

Mr. Mintzer: If your Honor please, I have page 298—

Mr. Walsh: May I read what I would like?

The Court: Let Mr. Walsh go ahead.

Mr. Mintzer: All right.

1510 Mr. Walsh: If your Honor please, may I read from page 286:

"Q. And what was said? A. Well, at that time it was thought that that method would prove the most satisfactory one to all concerned, and at that time Hoffman said, 'What about the information that I have given on the letter with regard to assets and liabilities? How will that react?' And I think it was at that point something was said— 'Well, the creditors will get $10 apiece, and everybody will be satisfied.'

"Q. Do you remember who said that? A. I think Mr. Goldman—

1511 "The Court: Let me ask you right there—was Mr. Kandell in the room at that time?

"The Witness: Yes, sir, he was.

"Q. And those ten dollars you said was going to be given to the creditors. Who was there—

"Mr. Corbin: I object to that, your Honor.

"The Court: Objection sustained.

"Q. To whom was the $10 going to be given? A. The statement was general that the creditors would get $10.

1512 "Q. By that did you understand that all the creditors of the whole assignment were going to get $10 apiece? A. Well, probably I didn't, probably the creditors who were present."

Now it was in response to your Honor's own question that this witness, Mr. Wishbow, said that Kandell was present in the room at the time they were discussing the $10 that was going to be given to the creditors present at that time.

In furtherance, and with the preliminary statement that I made, plus this fact that he was present, if it be true—and I don't know but at least it is a

question of fact for the jury to decide whether or not he was there, whether or not Hoffman was telling the truth or whether or not Wishbow was telling the truth, at least that is a question of fact for the jury, and then subsequently— 1513

Mr. Mintzer: Judge, may I read on the very question that you asked at the time?

The Court: I will hear Mr. Walsh first and then I will hear you.

Mr. Walsh: May I continue?

The Court: Very well. Let him finish and then I will hear you.

Mr. Walsh: Up to and including that point I will agree with your Honor, and then subsequently at the meeting, when I think at that time that the conspiracy was formed, Kandell knew everything that was going about and what was going to happen, and then subsequently he goes around to Mr. Rothlein and says, "Rothlein, why can't I use your name?" And this bill of sale certainly is one of the essential ingredients of the conspiracy, if the conspiracy is a conspiracy at all. In other words, that is just the climax so far as Kandell is concerned. 1514

The Court: If there is a connecting link to show knowledge on his part, that is sufficient. 1515

Mr. Walsh: Well, I think that has been demonstrated amply.

The Court: Does the record show how far he was or where he was when that conversation was going on?

Mr. Walsh: No. The record shows—

The Court: Well, let me hear from Mr. Mintzer.

Mr. Mintzer: Right on that very point, a question by me—

Mr. Walsh: May I have the page, please?

Mr. Mintzer: Page 298:

1516 "Q. Mr. Wishbow, did you have any conversations with Kandell during the pendency of the Hymowitz case? A. I don't believe I did.

"Q. The Judge asked you before whether Mr. Kandell was present in the room. Do you or do you not mean the room where all the creditors were present? A. Yes, that is right.

"Q. About how many people were there at that time, altogether? A. Well, about half a dozen of us, I should say.

"Q. And this talk whether the creditors could realize $10 on their claims or not took place in that room where
1517 all the people were present? A. Yes, at the very beginning of the meeting."

Now, that is the room where all of the creditors were present. I say to your Honor that in order to show one guilty of conspiracy or of participating in a conspiracy you must show participation or guilty knowledge. Now we had ten witnesses on the stand in this trial and there isn't one witness—

The Court: Yes, gentlemen. I am going to dismiss it as to Kandell and say that I think very probably that he too is guilty, but I don't think you
1518 can prove he is guilty. You indulge in no speculation of guilt, but you can indulge in all the reasonable facts and circumstances. But when circumstantial it must exclude every other reasonable hypothesis. Well, all of the testimony taken as a whole has made the impression upon my mind—and that is the only thing you can go by, is the impression that you have when the matter is finally concluded, that while very likely that this man possibly at least—even probably—that this man Kandell did know about it, it is not easy to conceive how he could have gone through with it without knowing about it, the scheme and

everything. Yet there is a presumption that men do 1519
not commit crimes. That is a presumption of law that holds.

It is very reasonable that this man Kandell, just like a stenographer could have done it, could be used as a figurehead. They tell Kandell, "Go up and buy this. Take this fictitious name, and we are going to make you co-assignee." Well, he is willing to act as co-assignee innocently. He puts this letter out, and the leading lawyers in the transaction are the ones who usually get up the legal things, and the whole scheme here, if there be a scheme, taking the 1520
Government's case as true, is among the three lawyers. And if this man were to be alert and jumping at conclusions one would say, "Well, we will pitch those fellows $10 apiece,"—very easily could have seen something was wrong, but still there is not sufficient evidence for him to know what it was, so that in a conspiracy it must be shown that there is an agreement, either express or implied, or a tacit understanding that they are going to violate some law.

I cannot see, gentlemen, that that has been shown as to Kandell, and unless I could be so shown, unless—and if there were going to be any decision to 1521
let the case go to the jury with regard to Kandell and a verdict found against him, if it were found against him, I will say to you frankly that if a verdict of guilty was returned by the jury against Kandell I just could not let it stand. That is the impression I gained from all this testimony. There is no use taking up your time or mine with an argument on it.

Now with regard to the other three defendants, gentlemen, you may make your motions. I do not care to hear you unless you insist on it. I think the

22 evidence is sufficient, if believed, to convict them. If not believed, then of course they will not be guilty, but you can make your motions if you want to be heard.

Mr. Corbin: I just want to speak of one defendant in particular. I don't want to seem insistent but I think it is my duty—I think your Honor may have a misconception of the evidence.

Do I understand that Mr. Kandell's motion has been granted?

Mr. Walsh: Before you make up your mind and say definitely, if your Honor please, would it be out
23 of order if we were to submit to you evidence from the record which we believe—after all, we have tried and we thought that we did present a prima facie case so far as Kandell is concerned. There may be certain parts of the record—I do not think your Honor's memory is infallible—there may be certain parts that you don't remember, and if it wouldn't be asking too much, and with great respect, we would like to submit to you tomorrow morning a memorandum which would outline, together with the page references, all the testimony that we consider
24 germane and pertinent to the point that we are arguing at the present time. I don't believe Mr. Kandell will lose anything by that because your Honor has indicated your opinion, and unless we show a prima facie case I see nothing he can lose other than having a little more worry over the night what you are going to decide.

Mr. Corbin: I thought that had been decided.

The Court: Very well, gentlemen. Make your motions on the record, each one of you, whatever you want to dictate on the record.

Mr. Mintzer: All right. I move for a dismissal

as against the defendant Kandell on the ground that 1525
there wasn't any evidence established in this case to prove that he was in any way connected with the alleged conspiracy.

The Court: Very well.

Do you want to make a motion, Mr. Fielding, for your defendant?

Mr. Fielding: I move for the defendant Schulman on the same grounds, that it has not been shown by the Government that a conspiracy did exist and that he was not a party to it.

The Court: I will overrule the motion as to 1526
Schulman.

Mr. Fielding: Exception.

Mr. Corbin: I want to move on behalf of the defendant Morton Goldman for a dismissal of the indictment on the ground that the crime alleged has not been proven nor has any—

The Court: I will overrule the motion.

Mr. Corbin: Nor that it could be the subject of prosecution.

The Court: I will overrule the motion on behalf of Morton Goldman.

Mr. Corbin: Now if I knew your Honor's dispo- 1527
sition of the Kandell point, I think I could make a much stronger motion on behalf of Theodore Goldman.

The Court: Well, I have indicated how I feel toward the Kandell motion, but since the District Attorney has insisted, I think properly, I will reserve ruling upon that until the morning and review the testimony. If he has it written out there—I haven't anything special I have to do tonight—very well. Make your motion with respect to Theodore Goldman.

Mr. Corbin: Very well. Now as to that I want to say just a word. The evidence is that he and

1528 Kandell came to Hoffman's office on March 24th or 25th—the 25th, in the morning, yes. And that they had the discussion that was indicated by both counsel here. They left this stipulation for the substitution of the co-attorney and the co-assignee. There was nothing, I submit, in that conversation that did not apply to both of them, and the feeling that your Honor experiences with reference to Mr. Kandell must, I submit, apply equally to Theodore Goldman.

Now the next instance that you had called to your attention with reference to Kahtdell was the conversation after the creditors' meeting that same 1529 afternoon, in which it was said that there was some mention of $10 to some of them, and in respect to that conversation, Theodore Goldman was not even present. He did not attend the creditors' meeting, and we hear nothing whatever of Theodore Goldman from the time of March 25th, the morning when he came up there with Kandell on a perfectly proper mission, with a perfectly proper suggestion, namely, that creditors be represented. The situation, which I won't pause to describe, was certainly one which gave creditors—and Goldman's firm represented bona fide creditors—gave creditors the right, gave to 1530 Kandell the right and to Goldman, that they be represented. Nothing came of it and there was no talk about any split-up or anything wrong in that entire conversation of March 25, and as I say, Theodore Goldman wasn't there in the afternoon at all and he does not appear in the picture at all, and he hasn't even been mentioned by any witness from that morning of March 25th down to a day late in May, which is fixed on or about the 27th of May, that is, the next time that Theodore Goldman's name is even mentioned by anybody, and what was it there?

I asked and I got this response—Mr. Hoffman was the only one who mentioned it, and he said this, on page 225: 1531

"Q. And Theodore Goldman wasn't there? A. No, sir"—and then he added: "except that that conversation, the latter part of May, 1937—."

Now that was a conversation that Hoffman hadn't mentioned at all before but he added that to my inquiry of him—this is on cross—and then I said:

"Q. Well, was Schulman present at that? A. Schulman was present." 1532

I said: "When was that?" And he said: "I should judge that was in the latter part of May, 1937. That was at the time that—I think an application had been made by Endicott-Johnson to remove the assignee and that was subsequent to the dismissal of the petition in bankruptcy.

"Q. Well, Teddy Goldman, the younger man, was preparing papers in connection with those proceedings and the settlement that had been arranged, is that right? A. He was to prepare those papers.

"Q. He was the draftsman of those papers? A. Yes, I imagine he was the one to take care of the papers. 1533

"Q. Did this talk about split-up and the four hundred plus something, was that with Schulman in the absence of both Teddy Goldman and Morton Goldman and in the absence also of Kandell? A. That is correct."

So that what Endicott-Johnson did, as the file shows here, they came in fresh, a perfectly independent creditor who was not represented by any of these defendants, an independent attorney, and they made a motion, the effect of which was to have a new assignee associated with Kolman and a new attorney

534 associated with Hoffman, and it was to stop the sale which was then in progress, of the bulk sale. Their attitude was, whereas they take the 40 per cent, that they wouldn't take that in full discharge of their claim, they would still try and would hold Hymowitz for the balance. They finally agreed, as the papers show here, that that matter should be disposed of by their having an auctioneer, whom they named, preside at the sale. That is, the sale would go through by way of assignment proceedings; not the bulk sale. The assignment proceedings would go through if they had this other auctioneer that they named, and
535 it went through that way and they insisted also on Mr. Morton Goldman representing the assignee as a co-attorney in the interests of creditors. They said, "If he is in there with Hoffman, all right." So it was settled that way, but they are a thoroughly independent source, and this young man, Teddy Goldman, prepared the papers to discharge or vacate or dismiss that motion that had been made by Endicott-Johnson, which was arranged—and it it not a feature of this case except as a matter of history of development of the case, hasn't a thing to do with
536 it, has nothing to do with the crime, in any event. This was a crime charged here with having one price, $1900, which was the real figure, and the difference between that and the other figure of $1500 split among the attorneys illegally. Of course the gravamen of the defense is the dismissal of the petition in bankruptcy, else this Court wouldn't have jurisdiction anyway. This same Endicott-Johnson matter is an incidental happening that occurred after the petition was dismissed, and those two things are all that they got in this record which refer to any way to Theodore Goldman. It seems to me on that state-

ment, upon this record, that there can be no possible 153
question, not even half the question that arises with respect to Kandell.

The Court: Well, I cannot agree with you, Mr. Corbin. I think the circumstances are sufficient to carry the case to the jury as to Theodore Goldman.

The situation of the parties is different. The surroundings are different, and the circumstances, if they be proof against one or have probative force against the one, probably wouldn't against the other. Now my conception of the case—and the impression has been made up in the light of all the testimony and of the circumstances and the reasonable inferences therefrom as to Teddy Goldman, is that if you take all the testimony of the Government as true, all the circumstances and all the reasonable inferences therefrom, it is not reasonably probable that he could help but know about what was going on, and that is one of the tests: If there is a probability that a man is innocent, then he is entitled to a judgment of acquittal because of reasonable doubt, but if it is not probable then he is not entitled to a verdict of acquittal. 1538

Now taking all the facts and circumstances, which I must, upon an application as true, I must say that it is reasonably probable that Morton Goldman and Theodore Goldman and Schulman entered into this conspiracy, with the telephone conversations that had been had, with the meetings that had been had with the creditors, with the preparation of the papers and the appearances in court that had been had—I can't believe, taking it as probable—acting as a partner in the firm—I cannot believe it is reasonably probable that he wouldn't have known about the unlawful crime. That does not apply to Kandell because he 1539

1540 was situated differently. It is true that he was at some of the meetings and did some ministerial acts of sending out the letters and so on, and yet there isn't a thing that I have been able thus far to recall that would show with reasonable probability that he did have some connection with it so far as guilty knowledge was concerned.

So I am going to overrule your motion as to Theodore Goldman along with the others, and I will reserve ruling upon the motion of Kandell until tomorrow morning. I will take that record with me and
1541 I will read that record tonight. I will hear you; If I conclude after reading that record that the motion should be sustained I won't require you to go on with the case. I will let you know in the morning. In other words, I will give you a ruling in the morning.

Are you gentlemen ready to proceed with testimony this afternoon?

Mr. Corbin: I think we can.

The Court: Do you want a recess?

Mr. Corbin: Yes.

The Court: Very well. We will take a few min-
1542 utes' recess.

Mr. Walsh: Your Honor, I did not mean that you should lose your evening by reading it. We would be happy to digest those particular parts.

The Court: We get impressions as we go along. I have gotten the impression that he hasn't been connected. Now to take that part there, independent of explanations, there might be sufficient, but I would like the record and I can read it very rapidly.

Mr. Corbin: May I have an exception on the record for my defendants?

The Court: Yes, you may have an exception.

(Short recess.)

NICHOLAS KALMEYER, called as a witness on behalf of 1543
the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Kalmeyer, where do you live? A. I live at 1763-62nd Street, Brooklyn.

Q. And what is your business? A. I am a general buyer of merchandise.

Q. A general buyer of merchandise? A. Yes.

Q. How long have you been in that business? A. Well, about 25 years.

Q. Have you had occasion over that period to appraise 1544
stocks of merchandise? A. Yes. I do it very often for the jobbers.

Q. And are you familiar with the appraisal of dry goods and articles of that nature? A. Yes. That's been my business.

Q. Were you at any time in 1937 asked to appraise a stock of what is commonly known as an Army & Navy store stock at 346 Bowery, near Bleecker Street? A. I was.

Q. Did you know the name of the proprietor of that store? A. No, I didn't.

Q. At whose request did you go up and make an appraisal? A. A party by the name of Schwartz.

Q. Mr. Schwartz? A. Of the firm of Schwartz & Zucker- 1545
man.

Q. And Schwartz & Zuckerman were a creditor of this man Hymowitz? A. That is right.

Mr. Walsh: Well, he said he did not know the individual who owned the store. I object to the question as leading.

The Court: I will overrule the objection.

Q. Yes or no? A. What is that?

Mr. Fielding: Read the question.

1546 Q. (Read.) A. That's right.

Q. When did you go up to the store? A. Sometime in April, in 1937.

Q. And when you got there was the store open? A. No, the store was closed.

Q. How long did you have to wait before it was opened? A. Well, I waited for about ten minutes till Mr. Schwartz came along and then the two of us waited till the custodian of the store came to open it.

Q. You did not know who this custodian was? A. No.

Q. And did you appraise the merchandise? A. Yes, I did.

1547 Q. What did you do when you appraised it? A. Well, I looked it through in my own way as to the value of the merchandise.

Q. And in your opinion what was the value of that merchandise for sale purposes? A. For me to buy it?

Q. Yes. A. Around $1100.

Q. In other words, you would make an offer of $1100 for the goods as they stood there? A. That's right.

Mr. Fielding: That is all.

Cross examination by Mr. Walsh:

1548 Q. Do you remember the date in April that you went to make an appraisal of this store? A. Well, I wouldn't remember the exact date, anyway.

Q. Did you make any memorandum at that time when you made the appraisal? A. Yes—not as far as the figures are concerned.

Q. You made a notation? A. Well, I put it on a piece of paper.

Q. And you were going to be the buyer, I understand? A. I didn't know I was going to be the buyer. I was called in to appraise it.

Q. Did you know at that time that the Hymowitz estate which was located at 346 Bowery was in bankruptcy?

Mr. Fielding: I object to that. 154

Mr. Walsh: I think that is proper.

The Court: I will overrule the objection.

Mr. Fielding: Exception. That is not stating the facts.

Q. Did you know that? A. (No response.)

Q. Well, were you there after April the 3rd, 1937? A. I was only once.

Q. Well, I mean was it the beginning of April or the end of April? A. I really couldn't say.

Q. That is quite some time ago. A. I wouldn't remember. 155

Q. Did you know whether or not that estate was in bankruptcy at the time you made that appraisal? A. Well, I wasn't interested in the condition of the sale. I wasn't interested at all. I am called in at different times by creditors to appraise stocks for them.

Q. I ask you again whether or not you knew that the estate of Paul Hymowitz was then in bankruptcy and under the jurisdiction of the Federal Court? A. Why—

Q. Did you know that? A. I am totally—as a matter of fact, I don't know.

Q. Well, do you know whether or not you could have purchased that stock other than from a sale conducted by the trustee in bankruptcy? A. Well— 155

Q. Do you know that? A. I don't know anything. All I do know—

Q. Well, I won't dispute that, but I want to know whether or not you know you can buy a stock or the proceeds of a business—A. Well, that isn't—

Q. —other than from the trustee in bankruptcy? A. That isn't why I am called.

Q. Do you know that, sir? A. No, that is not my end of the business at all. I am not interested in that.

Q. Now when you say that you were going to offer

1552 $1100 for the merchandise as it stood in the store in April—A. That is right.

Q. What was the approximate cost of the merchandise that you looked at at that time? A. Well, I will tell you, I haven't put down exact figures what the value of the merchandise was.

Q. Have you got those figures, incidentally? A. No.

Q. You destroyed that paper? A. Well, it is so many years—it is two years back.

Q. Did you give the figures to Mr. Schwartz? A. Yes, I told it to him personally.

Q. You told Mr. Schwartz in person what? A. That
1553 my offer for the stock would be $1100.

Q. Well, Mr. Schwartz, was he going to sell it to you? A. No, but they put it—they put it to the creditors' committee and decided what to do with it. That is the way it is generally conducted.

Q. I see. Were you in the courtroom when Mr. Abramson was on the stand? A. Partly; not all.

Q. Did you hear him testify that he valuated the cost of the merchandise in that store anywhere from 2000 to $2500? Did you hear that? A. Well, that is a matter of opinion.

Q. Were you here then when he said that? A. No, I
1554 didn't hear him say that.

Q. And he also testified that he offered the first time about $1100. Did you hear him say that? A. I will—

Q. Well, what was your value that you put on the cost of the merchandise? A. If he put—

Mr. Fielding: I object to the question unless he did put a value on the cost of the merchandise.

The Court: Yes. I will sustain the objection, unless he did.

Q. Well, did you evaluate how much the cost was before

you made your offer of $1100, how much you would pay for it? A. What it was to be liquidated for? 1555

Q. What was the cost value? A. We are not interested in that at all.

Q. But that is how much you would give for it? A. How much it could be liquidated for.

Q. You did not know to whom this stock belonged, did you? A. I just made the offer to Schwartz, that's all.

Q. That was the first offer that you made for the merchandise, approximately $1100? A. Yes.

Q. Is that correct? A. That's right.

Q. And is it usual to make a very low offer on the very first offer and then up it, as the case may be, to get the stock? A. No, not necessarily. 1556

Q. In other words, you offer the highest price the first time? A. That's worth to me.

Q. And you never upped your offer at any time? A. No. I wouldn't have any occasion.

Q. Did you ever up an offer after you made the first price? A. In usual cases, I don't.

Mr. Walsh: That is all.

(Witness excused.)

1557

SAMUEL LIEBERMAN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Fielding:

Q. Mr. Lieberman, where do you live? A. 521 East 28th Street, Paterson, New Jersey.

Q. And what is your occupation? A. Cash buyer.

Q. Of what? A. Of general merchandise.

Q. And does that include the stock which is generally kept in what we call an Army & Navy store? A. Yes, sir.

Q. And how long have you been in that business? A. About 25 years.

1558 Q. And did you at any time—and if so, when—make any inspection and appraisal of the Army & Navy store known here now as the Hymowitz store on the Bowery? A. Yes, sir, I did.

Q. And when did you make that appraisal? A. That was some time in March.

Q. Did you go to the store? A. I did.

Q. Was it open at the time when you arrived at the store? A. There was some gentleman standing outside waiting for us at that time.

Q. And when you say "us" whom do you mean? A. Mr. Abramson and myself.

1559 Q. Was Mr. Schulman there with you at that time? A. No, sir.

Q. You went into the store? A. Yes.

Q. How much of an inspection did you make of the goods? A. Well, I—at that time I think it was worth—

Q. No. What did you physically do when you went into the store? Did you make a careful appraisal or just ran your eye over it? A. Oh, no. We took an inventory there.

Q. You took an inventory? A. Yes.

Q. And at the conclusion of that inventory what was your opinion that you would pay for the stock if you bought it? A. Well, for the merchandise alone it would

1560 run around $1200.

Q. Did you make such an offer for the merchandise? A. Well, you see, Mr. Abramson—

Q. Did you make such an offer, you or Mr. Abramson? A. Mr. Abramson made the offer.

Q. Later on did you make another offer? A. Yes, sir. There were two offers made there.

Q. What was the second offer? A. There was an offer made for $1500.

Q. And what did that include? A. That includes for the—there was some tickets there, food tickets or something—

Q. Which you understood to be worth about how much? 1561
A. About $300.

Q. So that your second offer of $1500, so far as the value of the inventory was concerned, was exactly the same as the first offer you made? A. That is right.

Q. The difference being represented by those food tickets? A. That is right.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh:

Q. Do you remember the date when you went down there, sir? A. It was sometimes in March. 1562

Q. The latter part of March? A. I wouldn't remember; I couldn't tell you that.

Q. With whom did you go? A. With Mr. Abramson.

Q. You are his partner, aren't you? A. I was associated with him.

Q. At that time? A. That is right.

Q. Did you hear his testimony in court? A. I heard part of it, yes.

Q. None of those offers was ever accepted, was it? A. Not that I know of, no.

Q. Do you know a man by the name of Wein? A. Yes, I do. 1563

Q. Do you know Mr. Schulman, by the way? A. I know him, yes.

Q. How long have you known him? A. I know him for a few years.

Q. Well, how long is a few years? A. Probably about two years—two or three years.

Q. That is 1938? A. No. That would be around—I know him since about 1936.

Q. About 1936? A. Yes, sir.

Q. Have you ever done any business for him? A. No.

1564 Q. Did you ever go down to this store at 346 Bowery with him? A. Not with Mr. Schulman, no.

Q. Whom did you go down there with? A. We went down—I went down with Mr. Abramson and another attorney.

Q. And how many times did you go down to that store? A. Just once.

Q. Now is it true that both you and Mr. Abramson went down and made a general inventory the first time? A. That's right.

Q. Did you hear Mr. Abramson testify to the effect that it was worth anywhere from 2000 to $2500, the stock?

1565 Mr. Fielding: I object to the question as not proper in form.

The Court: I sustain the objection.

Q. Well, what was the inventory price that both you and Mr. Abramson, your partner, agreed on at that time? A. What to pay for the store?

Q. What the inventory price was, or the merchandise in the store. A. Well, I would know the inventory, the wholesale inventory, if that is what you mean.

Q. What was the cost value of the merchandise, of that 1566 stock? A. I wouldn't know that. I know I wouldn't know the cost value.

Q. You wouldn't know that? A. No.

Q. And yet you are a partner of Mr. Abramson? A. That's right.

Q. Do you know what a line means? A. Yes, sir.

Q. What does it mean? A. That means double the amount. For instance, if you say $100, you say "line 2", means $200.

Q. What do you mean by "a five line"? A. A five line means $2500.

Q. $2500? A. That's a five line.

Q. And didn't you tell Mr. Schulman down at that place that that was the five line? A. I never spoke to Mr. Schulman.

Q. Down there at the— A. No.

Q. Do you know Mr. Kolman? A. No.

Q. He was the assignee of Paul Hymowitz. A. There was one young man that I seen there. I wouldn't know his name.

Q. Why wasn't your offer accepted, do you know? A. No, I really don't know.

Q. When did you learn about the $300 that was supposed to be included in the sale of that store? A. I don't know when we learned about it, but I knew we talked it over.

Q. With whom? A. With Mr. Abramson.

Q. In other words, the two of you— A. We always combined what we should offer for a store. We always put our figures together.

Q. But where did you hear about the $300? A. Right in our office on Grand Street.

Q. Who told you? A. Mr. Abramson.

Q. Who told him, do you know? A. I don't know.

Q. Do you know when you first heard about the $300 tickets that were going to put in? A. No, I don't remember.

Q. You don't remember when you heard that at all? A. No, I wouldn't remember.

Q. Well, would that be right around March? A. It must have been around the same time.

Q. Well, it was closely connected with that? A. It must have been closely connected with that.

Q. Do you know a man by the name of Rothlein? A. Rothlein?

Q. Yes. A. I don't know.

Q. You don't know him? A. No.

Q. Well, did you make an offer for that merchandise? A. I didn't. Mr. Abramson made it.

1570 Q. He was your partner? A. That is right.

Q. You were present when he made the offer? A. No, I wasn't present when he made the offer.

Q. To whom did he make the offer? A. I don't know to whom he made it, but I know he made the offer.

Q. Did he make it to Schwartz, too? A. I don't think so.

Q. To whom did he make it, do you know? A. I don't know. I think it was in Kandell's—Cohen and Kandell's office.

Q. He made the offer? A. Up in their office.

Q. To whom? A. I that I don't know.

Q. How long have you known Kandell? A. Oh, quite a
1571 few years.

Q. Well, about how long? A. Maybe since 1935, 1936.

Q. Did you ever do business with him? A. Yes, I had business with Mr. Kandell.

Q. Which came first, the offer of 12 or the offer of 15? A. That I couldn't remember.

Q. You wouldn't know that? A. I wouldn't remember that.

Q. Well, do you remember with whom you may have had your conversation as to what you would pay for the merchandise? Did you have it with Mr. Cohen? A. I had no
1572 conversation, with none of them.

Q. But you do know Mr. Kandell? A. I do know him.

Q. Who had the conversation with the person who was supposed to purchase this merchandise? A. Mr. Abramson.

Q. And he had all this conversation up at Cohen and Kandell? A. I don't know where he had it, but I know he was the one who was doing the talking.

Q. Do you know a man by the name of Mr. Rothlein? A. No.

Q. You don't? A. No.

Q. Do you know what name was going to be put in the bill of sale of the offer you made? A. No, I don't.

Q. Was it L. Wein? A. I didn't know it. 1573

Q. What? A. I didn't know it.

Q. Did you ever use the name of L. Wein when you would purchase goods? A. Yes, we did.

Mr. Walsh: That is all. Thank you very much.

Mr. Fielding: Your Honor, at this time there are one—perhaps two—witnesses whose examination would be short, but they are not here, not knowing that the case would be terminated at this time. I will put Mr. Schulman on the stand next, but that will be a very protracted direct and cross examination, and I ask leave that that go over to tomorrow. 1574

Mr. Walsh: Well, I have no objection if he starts today, if your Honor please. I don't know how long he wants to continue.

The Court: Well, I was going to run till about five o'clock or five minutes after. If you could get through all the preliminaries, all right; but if you would rather wait until tomorrow—

Mr. Fielding: It would suit me better to have it wait until tomorrow morning, to have it continuous.

The Court: Very well. Do you have anybody else that you can use at this time?

Mr. Fielding: Yes. Mr. Stringer—I didn't know this gentleman was in the room. 1575

(Witness excused.)

ABRAHAM STRINGER, called as a witness on behalf of the defendants, being duly sworn testified as follows:

Direct examination by Mr. Fielding:

Q. Where do you live? A. 2305 East 22 Street, Brooklyn.

Q. And what is your occupation? A. Auctioneer and jobber.

1576 Q. And what were you doing in 1937, in April of that year? A. What I was doing?.

Q. What were you doing in April of 1937? What was your occupation then? A. The same business.

Q. In the same business. Did you receive a request from any of these defendants at that time to inspect merchandise in the store, an Army & Navy store on the Bowery? A. Yes.

Q. And who requested you to go to that store? A. A creditor by the name of Zuckerman on Orchard Street, New York.

Q. He is a partner of Mr. Schwartz, isn't he? A. Yes.

1577 Q. Did you go to the store? A. Yes. I went with Mr. Zuckerman.

Q. When? A. On April—whatever date it was—1937.

Q. And Mr. Zuckerman was a creditor of this Hymowitz? A. That is what he told me.

Q. And did you appraise the merchandise? A. Well, I was there with my associate.

Q. Who is he? A. Mr. Michaels—Jack Michaels.

Q. What is his business? A. Same business; Auctioneer and appraiser.

Q. And how long has he been in that business? A. About 30 years.

1578 Mr. Walsh: I object to that, if your Honor please, unless he was with him all the time.

The Court: Well, I will overrule the objection.

Mr. Fielding: We expect Mr. Michaels here tomorrow, so it makes no difference.

The Court: All right.

Q. Was an appraisal then and there made for the merchandise? A. Yes.

Q. And what was the figure that you put on it? A. I believe it was $1050—$1050.

Q. $1050? A. That's right. 1579

Q. And you inspected the merchandise, did you not? A. Yes.

Q. How long were you in there? A. Oh, I should say about 20 minutes.

Q. Did you report to any person the value of the merchandise as you considered it, other than Mr. Zuckerman who was with you? A. No, sir.

Q. That ended your connection with the matter? A. Yes, sir.

Mr. Fielding: Your witness.

Cross examination by Mr. Walsh: 1580

Q. How old are you, sir? A. 30 years.

Q. And how old were you in 1937? A. 27.

Q. And how long had you been an auctioneer in 1937? A. In 1937? Well, I am eight years now an auctioneer, so about five years then.

Q. And do you still work for Mr. Michaels? A. I don't work—I am connected with him; partner.

Q. Well, is he also an auctioneer? A. Yes.

Q. And were both of you down there making an appraisal? A. That's right.

Q. On that occasion? A. Yes. 1581

Q. You say a man by the name of Mr. Zuckerman—A. Yes.

Q. —came down and asked you to make an appraisal? A. Yes.

Q. With whom was Mr. Zuckerman associated? A. I don't know his partner's name. I have dealt with him before.

Q. Is it Schwartz? A. I believe it was.

Q. Schwartz & Zuckerman? A. I believe it is Schwartz & Zuckerman on Orchard Street. I know—

Q. And approximately—pardon me. Did you have some-

1582 thing more to say? A. I know he has a place on Orchard Street and he called me on the phone and told me to meet him there and go down with him.

Q. And did you go there with him? A. Yes.

Q. How long have you known Mr. Schulman? A. Mr. Schulman? Oh, maybe five or six years.

Q. Did you know him prior to 1937? A. Oh yes.

Q. Approximately when did you go down to the store? A. I know it was in April, 1937.

Q. In April of 1937? A. I am not sure of the exact day.

Q. And when you were there you made an appraisal of that store in 20 minutes, is that correct? A. That is

1583 correct.

Q. What was that appraisal of $1050? Was that what you would offer to purchase the goods for? A. Yes.

Q. Did you evalute what was the price of the merchandise in the store at that time?

Mr. Fielding: You mean the cost price?

Mr. Walsh: The cost price, yes.

A. No.

Q. That is what you would get on, shall we term, a "knockdown-drag-out sale"? A. No, that's what I would

1584 pay for it.

Q. If you were buying it? A. That is right.

Q. And then you in turn would sell it again? A. Would resell it again.

Q. What is usually your profit after you purchase your goods? A. Oh, about 15 percent.

Q. 15 per cent? A. Yes, besides the expense.

Q. Well, what expenses do you have? A. Well, expenses are usually $100.

Q. So you make 150 to $200 on a thousand dollar lot? A. Yes.

Q. Is that right? A. 200, 250.